

4-8-2015

# State v. Ortega-Vastida Clerk's Record v. 1 Dckt. 42985

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,	)	
	)	
Plaintiff/Respondent,	)	SUPREME COURT NO. 42985
	)	DISTRICT COURT NO. CR 2014-4282
vs.	)	
	)	
Gabriel Ortega-Vastida	)	
	)	
<u>Defendant/Appellant,</u>	)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for the County of Jerome

HONORABLE JOHN K. BUTLER  
District Judge

SARA THOMAS  
State Appellate Public Defender  
P.O. Box 2816  
Boise, Idaho 83701

ATTORNEY FOR APPELLANT

LAWRENCE WASDEN  
Attorney General  
Statehouse Mail Room 210  
P.O. Box 83720  
Boise, Idaho 83720-0010

ATTORNEY FOR RESPONDENT

State of Idaho vs. Gabriel Ortega-Vastida

Date	Code	User		Judge
8/25/2014	NEWI	IMPORT	New Case Filed, Citation Import	Thomas H. Borresen
	PROS	SANDRA	Prosecutor assigned Brian J Williams	Thomas H. Borresen
8/26/2014	BNDC	KATIE	Bond Posted - Cash (Receipt 1407009 Dated 8/26/2014 for 1000.00)	Thomas H. Borresen
	HRSC	KATIE	Hearing Scheduled (Arraignment 09/15/2014 09:15 AM)	Thomas H. Borresen
	ORAP	KATIE	Appearance Order	Thomas H. Borresen
	PCAR	KATIE	Probable Cause Affidavit, In Support Of Arrest And/or Refusal To Take Test	Thomas H. Borresen
	NSET	KATIE	Notice Of Suspension For Failure Of Evidentiary Testing	Thomas H. Borresen
9/15/2014	ARRN	KATIE	Hearing result for Arraignment scheduled on 09/15/2014 09:15 AM: Arraignment / First Appearance	Thomas H. Borresen
9/17/2014	RGTS	KATIE	Statement Of Defendants Rights-misd	Thomas H. Borresen
	RGTS	KATIE	Statement Of Defendants Rights-dui	Thomas H. Borresen
	NOSP	KATIE	Notification Of Subsequent Penalties-dui	Thomas H. Borresen
	ORPT	KATIE	Order To Appear For Pre-trial	Thomas H. Borresen
	ORPD	KATIE	Defendant: Ortega-Vastida, Gabriel Order Appointing Public Defender Public defender Jeremy L Pittard	Thomas H. Borresen
	HRSC	KATIE	Hearing Scheduled (Pretrial Conference 11/24/2014 03:00 PM)	Thomas H. Borresen
11/5/2014	AMCO	KATIE	Amended Complaint Filed- Part 1	Thomas H. Borresen
	AMCO	KATIE	Amended Complaint Filed- Part 2	Thomas H. Borresen
	REDU	KATIE	Charge Reduced Or Amended (118-8004 {F} Driving Under the Influence-(Third or Subsequent Offense))	Thomas H. Borresen
	APPL	KATIE	Verified Application For Bond Revocation	Thomas H. Borresen
	NOHG	KATIE	Notice Of Hearing	Thomas H. Borresen
	HRSC	KATIE	Hearing Scheduled (Motion to Revoke Bond 11/14/2014 01:30 PM)	Thomas H. Borresen
	WARI	KATIE	Warrant Issued - Arrest Bond amount: 50000.00 Defendant: Ortega-Vastida, Gabriel	Thomas H. Borresen
	XSEA	KATIE	Case Sealed	Thomas H. Borresen
11/6/2014	ORDR	KATIE	Order To Transport	Thomas H. Borresen
11/7/2014	WART	KATIE	Warrant Returned Defendant: Ortega-Vastida, Gabriel	Thomas H. Borresen
	XUNS	KATIE	Case Un-sealed	Thomas H. Borresen
11/12/2014	MISC	KATIE	Twin Falls arraignment minutes	Thomas H. Borresen
11/13/2014	ORDR	KATIE	Second Amended Order To Transport	Thomas H. Borresen

State of Idaho vs. Gabriel Ortega-Vastida

Date	Code	User	Judge
11/14/2014	CMIN	KATIE	Court Minutes Hearing type: Motion to Revoke Bond Hearing date: 11/14/2014 Time: 1:30 pm Courtroom: Court reporter: Minutes Clerk: Katie Elliott Tape Number: Defense Attorney: Jeremy Pittard Prosecutor: Brian Williams Thomas H. Borresen
	HRHD	KATIE	Hearing result for Motion to Revoke Bond scheduled on 11/14/2014 01:30 PM: Hearing Held Thomas H. Borresen
	ARRN	KATIE	Hearing result for Motion to Revoke Bond scheduled on 11/14/2014 01:30 PM: Arraignment / First Appearance- New Felony charge Thomas H. Borresen
	HRVC	KATIE	Hearing result for Pretrial Conference scheduled on 11/24/2014 03:00 PM: Hearing Vacated Thomas H. Borresen
	PROS	KATIE	Prosecutor assigned John L Horgan Thomas H. Borresen
	ORPD	KATIE	Defendant: Ortega-Vastida, Gabriel Order Appointing Public Defender Public defender Stacey DePew Thomas H. Borresen
	HRSC	KATIE	Hearing Scheduled (Preliminary Hearing 11/21/2014 10:30 AM) Thomas H. Borresen
	RGTS	KATIE	Statement Of Defendants Rights- Felony Thomas H. Borresen
		KATIE	Notice Of Hearing Thomas H. Borresen
11/17/2014	NOTC	SANDRA	Notice Of Invocation Of All Statutory And Constitutional Rights And Privileges And Revocation Of Any And All Previously Given Waivers Of Said Privileges Thomas H. Borresen
	RQDS	SANDRA	Request For Discovery And Inspection Thomas H. Borresen
	RSRD	SANDRA	Response To Request For Discovery And Inspection And Notice Of Defendant's Intent To Request Bond Reduction At Preliminary Hearing Thomas H. Borresen
11/20/2014	RSRD	RAMSEYER	Response To Request For Discovery Thomas H. Borresen
11/21/2014	CMIN	JENNIFER	Court Minutes Hearing type: Preliminary Hearing Hearing date: 11/21/2014 Time: 10:36 am Courtroom: Court reporter: Minutes Clerk: Jennifer Wilder Tape Number: Defense Attorney: Stacey DePew Prosecutor: Sandra Scott Thomas H. Borresen



State of Idaho vs. Gabriel Ortega-Vastida

Date	Code	User	Judge
11/24/2014	BOUN	JENNIFER	Hearing result for Preliminary Hearing scheduled on 11/21/2014 10:30 AM: Bound Over (after Prelim)
	CHJG	JENNIFER	Change Assigned Judge
	HRSC	JENNIFER	Hearing Scheduled (Arraignment 12/08/2014 09:00 AM)
		JENNIFER	Notice Of Hearing
	ORDR	SHELLY	Order Holding Defendant to Answer to District Court
12/5/2014	NIAR	SHELLY	Notice of Filing Information and Notice of Arraignment
	INFO	SHELLY	Information Part 1
	INFO	SHELLY	Information Part 2
12/8/2014	CMIN	SHELLY	Court Minutes Hearing type: Arraignment Hearing date: 12/8/2014 Time: 8:40 am Courtroom: Court reporter: Denise Schloder Minutes Clerk: Shelly Creek Tape Number: Defense Attorney: Stacey DePew Prosecutor: John Horgan
	DCHH	SHELLY	Hearing result for Arraignment scheduled on 12/08/2014 09:00 AM: District Court Hearing Held Court Reporter: Denise Schloder Number of Transcript Pages for this hearing estimated:
12/9/2014	HRSC	SHELLY	Hearing Scheduled (Jury Trial 03/11/2015 09:00 AM)
	HRSC	SHELLY	Hearing Scheduled (Pretrial Conference 03/02/2015 09:00 AM)
	HRSC	SHELLY	Hearing Scheduled (Status 01/26/2015 09:00 AM)
		SHELLY	Notice Of Trial
	NOTZ	SHELLY	Notice of JT, PT, Status Conference, Scheduling Order and Defendant's Request for Financial Assistance.
	CONT	TRACI	Continued (Status 01/26/2015 01:30 PM)
	HRSC	TRACI	Hearing Scheduled (Motion to Suppress 01/26/2015 01:30 PM)
12/10/2014	MOTN	TRACI	Motion to suppress
	NOTH	TRACI	Notice Of Hearing
	NOTH	TRACI	Amended Notice Of Hearing
	ORDR	TRACI	Order for preparation of preliminary hearing transcript at county expense

State of Idaho vs. Gabriel Ortega-Vastida

Date	Code	User	Judge
12/10/2014	CONT	TRACI	Continued (Motion to Suppress 01/05/2015 01:30 PM)
	CONT	TRACI	Continued (Status 01/26/2015 09:00 AM)
		TRACI	Amended Notice of Hearing and 2nd Amended Notice Of Hearing
12/31/2014	TRAN	SHELLY	Transcript Filed
1/5/2015	CMIN	SHELLY	Court Minutes Hearing type: Motion to Suppress Hearing date: 1/5/2015 Time: 12:42 pm Courtroom: Court reporter: Denise Schloder Minutes Clerk: Shelly Creek Tape Number: Defense Attorney: Stacey DePew Prosecutor: Paul Kroeger
	DCHH	SHELLY	Hearing result for Motion to Suppress scheduled on 01/05/2015 01:30 PM: District Court Hearing Held Court Reporter: Denise Schloder Number of Transcript Pages for this hearing estimated:
	HRSC	SHELLY	Hearing Scheduled (Motion to Suppress 01/26/2015 01:30 PM)
	HRVC	SHELLY	Hearing result for Status scheduled on 01/26/2015 09:00 AM: Hearing Vacated
	HRSC	SHELLY	Hearing Scheduled (Status 01/26/2015 01:30 PM)
		SHELLY	3rd Amended Notice Of Hearing
1/26/2015	CMIN	TRACI	Court Minutes Hearing type: Motion to Suppress/Status Hearing date: 1/26/2015 Time: 1:55 pm Courtroom: Court reporter: Denise Schloder Minutes Clerk: Traci Brandebourg Tape Number: Defense Attorney: Stacey DePew Prosecutor: Sandra Scott
	DCHH	TRACI	Hearing result for Status scheduled on 01/26/2015 01:30 PM: District Court Hearing Held Court Reporter: Denise Schloder Number of Transcript Pages for this hearing estimated:

State of Idaho vs. Gabriel Ortega-Vastida

Date	Code	User	Judge
1/26/2015	DCHH	TRACI	Hearing result for Motion to Suppress scheduled on 01/26/2015 01:30 PM: District Court Hearing Held Court Reporter: Denise Schloder Number of Transcript Pages for this hearing estimated:
2/2/2015	MEMO	TRACI	Memorandum decision re: defendant's motion to suppress--granted
2/13/2015	NTOA	SHELLY	Notice Of Appeal (Motion to Suppress 2-2-15)
	APSC	SHELLY	Appealed To The Supreme Court
2/18/2015	HRSC	SHELLY	Hearing Scheduled (Status 02/23/2015 09:00 AM)
		SHELLY	Notice Of Hearing
2/19/2015	MOTN	SHELLY	Motion for Appointment of State Appellate Public Defender
2/20/2015	ORDR	SHELLY	Order for Appointment of State Appellate Public Defender
2/23/2015	CMIN	SHELLY	Court Minutes Hearing type: Status Hearing date: 2/23/2015 Time: 8:46 am Courtroom: Court reporter: Denise Schloder Minutes Clerk: Shelly Creek Tape Number: Defense Attorney: Stacey DePew Prosecutor: John Horgan
	DCHH	SHELLY	Hearing result for Status scheduled on 03/02/2015 09:00 AM: District Court Hearing Held Court Reporter: Denise Schloder Number of Transcript Pages for this hearing estimated:
	HRVC	SHELLY	Hearing result for Pretrial Conference scheduled on 02/23/2015 09:00 AM: Hearing Vacated
	HRVC	SHELLY	Hearing result for Jury Trial scheduled on 03/11/2015 09:00 AM: Hearing Vacated
2/25/2015	MOTN	SHELLY	Motion to Allow Defendant to be Housed by the Idaho Department of Correction Pending Appeal
2/27/2015	ORDR	SHELLY	Order Allowing Defendant to be housed by the Idaho Department of Correction Pending Appeal

# Jerome Police Department - Uniform Citation

In the court designated below, the undersigned certifies that he/she has just and real grounds to believe and does believe that on:

Date / Time: 08/24/2014 04:00:AM

Citation #: JPD0059483

DR #: 140964

IN THE DISTRICT COURT OF THE 5TH JUDICIAL  
OF THE STATE OF IDAHO, IN AND FOR THE DISTRICT  
COUNTY OF Jerome  
STATE OF IDAHO

## COMPLAINT AND SUMMONS

☒ JEROME CITY  
☐ JEROME COUNTY

☐ Infraction Citation  
☒ Misdemeanor Citation  
☐ Accident Involved  
☐ Commercial Vehicle Driven by this Driver

## VIOLATOR

Last Name: ORTEGA Height: 5' 1" DL #:   
First Name: GABRIEL Weight: 140 SS #:   
Middle Initial: V Eyes: BRO DL State: ID  
Sex: M Hair: BRO Lic. Exp.: 2017  
DOB: Class:

Home Address:   
City, State, Zip: TWIN FALLS ID 83301-0000  
Phone:

Bus. Name: Bus. Phone:  
Bus. Address:

## REGISTRATION

Yr Veh: 2000 Color: TAN Carrier US DOT #:   
Make: TOYT Style: 4D GVWR 26001+: N  
Model: COA Veh. Lic. #: 2TX6543 16+ persons: N  
VIN: 1NXBR12E3YZ404844 State: ID Hazmat: N

## LOCATION

Upon a Public Street or Highway or Other Location Namely:

100 W A  
☐ School ☐ Construction

## VIOLATIONS

Did commit the following Offense(s), in violation of State Statute,

Posted Speed: Observed Speed: Date / Time: 08/24/2014 04:00:AM  
Actual Speed: Detection Method: Resolution: SIGNED PERSONAL RECOG

1	Violation: I18-8004C(1) (M) Driving Under the Influence Excessive
2	Violation:
3	Violation:
4	Violation:

## COURT INFORMATION

JEROME MAGISTRATE COURT Fine #1: MUST APPEAR  
233 W MAIN ST Fine #2:  
JEROME ID 83338-0000 Fine #3:  
Court Time: 09:15:AM Fine #4:  
Court Date: 9/8/2014

## SIGNATURE

I acknowledge receipt of this summons and I promise to appear at the time indicated.

I hereby certify service upon the defendant personally on 08/24/2014

Signature of Officer:

Officer: J KELLY  
Agency Name: JEROME POLICE DEPARTMENT

Officer ID: 4203C

Witnessing Officer / Party:  
Dept. / Party Addr.:

Serial #:

## OFFICER NOTES

SP      Duit

# MAGISTRATE DIVISION OF FIFTH DISTRICT COURT

11445

HR. 11 MIN. 30 \$ 1000.<sup>00</sup>

COUNTY SEROME, IDAHO, DATE 8-24-14

RECEIVED FROM JUAN LOPEMAN RODRIGUEZ PHONE (208) 735-8363

ADDRESS 279 ALEXANDER ST. TWIN FALLS, ID 83301

ONE THOUSAND & 00/100 DOLLARS

PERSON BONDED GABRIEL ORTIZ-VASTIDA

ARREST OFFICER KELLY CIT. NO. 54483

DEPARTMENT JPD APPOINTIVE CLERK

APPEARANCE DATE 9-15-14 @ 0915 BY LOPEMAN GO 8 of 129

8-26-14  
DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

FORM MUST BE COMPLETED BY ALL PARTIES POSTING CASH BOND AND SUBMITTED TO  
CLERK'S OFFICE WITH BOND RECEIPT

2014 AUG 26 PM 2:55  
Michelle Emerson

BY [Signature]

PLEASE COMPLETE THE FOLLOWING: PRINT CLEARLY SO THAT THE  
CORRECT INFORMATION IS LEGIBLE. THE INFORMATION BELOW IS TO  
BE FOR THE PERSON POSTING THE BOND.

FIRST NAME JUAN MIDDLE P LAST GUZMAN

ADDRESS 249 ALEXANDER

CITY TWIN FALLS STATE ID ZIP CODE 83701

HOME PHONE # (208) 735-8763 MESSAGE PHONE # (208) 712-9540

PERSON BEING BONDED OUT OF JAIL: Gabriel Ortega

CASH AMOUNT BEING POSTED: \$ 1000.00

Cut and give bottom to person posting bond

Date: 8/26/2014

Fifth Judicial District Court - Jerome County

NO. 1407009

Time: 02:09 PM

Receipt

Received of: Juan Guzman

\$ 1000.00

249 Alexander

Twin Falls, ID 83301

One Thousand and 00/100 Dollars

Case: CR-2014-0004282

Defendant: Ortega-Vastida, Gabriel

Cash bond: 1000.00

Payment Method: Cash

Amount Tendered: 1000.00

Michelle Emerson, Clerk Of The District Court

By: \_\_\_\_\_

Deputy Clerk

Clerk: KATIE



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR JEROME COUNTY

(EN EL TRIBUNAL DISTRICTO DEL QUINTO DISTRICTO JUDICIAL DEL  
ESTADO DE IDAHO, EN Y PARA EL CONDADO DE JEROME)

MAGISTRATE DIVISION  
(DIVISION MAGISTRADO)

\* \* \* \* \*

BY

*Michelle Emerson*

DEPUTY CLERK

THE STATE OF IDAHO,  
(EL ESTADO DE IDAHO),

vs.

APPEARANCE ORDER  
(ORDEN DE APARECER)

GABRIEL ORTEGA-VASTIDA  
DEFENDANT (ACUSADO)  
SS# or DL# [REDACTED]

As a condition of release, the above named defendant is hereby ordered to reappear in Magistrate Divisions of the District Court in and for Jerome County on **Monday**, 15<sup>TH</sup> day of SEPTEMBER, 2014 at 9:15 A.M.

(Como condicion de su liberacion el acusado antes mencionado es ordenado a reaparecer en la Division Magistrado del Tribunal Distrito en y para el condado de Jerome el **Lunes**, 15<sup>TH</sup> de SEPTIEMBRE, 2014 a las 9:15 a.m.)

Failure to appear will result in forfeiture of any bond posted and a Bench Warrant being issued for Defendant's arrest.

(Falta de aparecer se le resultara en perdida cualquier fianza y un orden de arresto sera puesto para el acusado.)

Dated this 24<sup>TH</sup> day of AUGUST, 2014.

THOMAS H. BORRESEN  
MAGISTRATE JUDGE  
(JUEZ MAGISTRADO)

Receipt Acknowledged: x GU by 'C' CTC 9/9  
(Acusar recibo de): Defendant (Acusado)

Date and Time: 8-24-14 @ 1147  
(Fecha y hora)

Witnessed by: [Signature]  
(Testigo) Sheriff's Department (Departamento del Sheriff)



Departmental Report # \_\_\_\_\_

**IN THE DISTRICT COURT OF THE 5 JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME.**

THE STATE OF IDAHO,

Plaintiff,

Gabriel V. Ortega

Defendant.

DOB [REDACTED]

SSN: 7930

DL# [REDACTED]

State: ID

State of Idaho,

County of Jerome

ss

2014 AUG 26 AM 2 28  
8-26-14  
BY Michelle Emerson  
COURT CASE NUMBER \_\_\_\_\_  
PROBABLE CAUSE AFFIDAVIT IN SUPPORT  
OF ARREST AND/OR REFUSAL TO TAKE TEST

I, Jason R. Kelly, the undersigned, declare and state:

1. I am a peace officer employed by Jerome City Police.

2. The defendant was arrested on 08/24/2014 at 0135 ☒ AM ☐ PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating substances pursuant to Section 18-8004 Idaho Code. Second or more DUI offense in the last ten years? ☐ YES ☒ NO ☐ FELONY ☒ MISDEMEANOR

3. Location of Occurrence: 100 West Avenue A

4. Identified the defendant as: Gabriel V. Ortega by: (check box)

☐ Military ID ☒ State ID Card ☐ Student ID Card ☐ Drivers License ☐ Credit Cards

☐ Paperwork found ☐ Verbal ID by defendant

Witness: \_\_\_\_\_ identified defendant.

Other: \_\_\_\_\_

5. Actual physical control established by: ☒ Observation by affiant ☒ Observation by Officer Summers

☐ Admission of Defendant to: \_\_\_\_\_, ☐ Statement of Witness:

☐ Other: \_\_\_\_\_

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST: On 08/24/2014 at approximately 0125 I was traveling North in the 200 block of South Lincoln transporting a suspect in an unrelated matter to the Jerome County Jail. While driving I observed a tan 2000 Toyota Corolla exit the alley on the west side of the road in the 100 block of South Lincoln. The vehicle pulled in front of another vehicle that was traveling south in the 100 block of South Lincoln. The second vehicle had to rapidly stop in order to prevent an accident. The Toyota then stopped in the middle of the road blocking both south bound lanes while it was facing east bound. The driver then slowly turned his vehicle and started to head south on South Lincoln. At this time I radioed for Officer Summers to start heading in this direction. I then observed the vehicle turn west onto West Avenue A.

I had strong reason to believe that the driver of the vehicle was very intoxicated based off his driving and felt that if he was allowed to continue he would be a great danger to himself and others on the roadway. I activated the overhead lights on my patrol car and stopped the vehicle in the 100 block of West Avenue A. At that time I did not make contact with the driver and Officer Summers arrived seconds later. I gave a brief explanation to Officer Summers and he conducted the rest of the traffic stop while I transported the suspect in my custody.

Officer Summers informed me that the driver of the vehicle was Gabriel V. Ortega and that he was very intoxicated and he was placed under arrest for driving under the influence of drugs, alcohol, or other intoxicating substances. Officer Summers informed me that while trying perform field sobriety testing Gabriel was unable to perform any task. Officer Summers stated that Gabriel had a hard time keeping any balance and that his speech was at the point of being almost incomprehensible.

Officer Summers had a Jerome County Deputy transport Gabriel to the Jerome County Jail where I attempted to perform a breathalyzer test on him. I ensured his mouth was free of any foreign objects and played him a copy of the suspension notice in Spanish. After 15 minutes Gabriel had done nothing to invalidate the test and was offered the chance to blow. Gabriel did not provide a good breath sample and continually attempted to provide only short bursts of breath. At one point I was able to have him provide approximately 4-5 seconds of continual breath however he never provided a sufficient sample. The BAC on the insufficient sample showed a result of .300.

Due to Gabriel being unable to provide a sufficient breath sample and the level of intoxication suspected he was transported to St. Lukes Jerome for a blood draw and a medical clearance. Gabriel agreed to allow medical staff to draw his blood for the state lab and medical clearance and signed the waiver form. Medical staff first took the blood sample for the state DUI kit and then retrieved a sample for their lab to test for the medical clearance. Nursing staff informed me that the St. Lukes Medical lab showed a BAC content of .370. After a doctor examined Gabriel they cleared him medically for custody and he was returned to the Jerome County Jail. Based of the results given from the insufficient sample and information given to me at the hospital Gabriel was charged with excessive DUI and issued citation 59483.

The blood sample has been entered into evidence was placed into the evidence refrigerator at the Jerome Police Department. The vehicle was towed from the scene by Gem State Towing.

D.U. I. NOTES

Odor of alcoholic beverage

☒ Yes ☐ No

Sobriety Tests – Meets Decision Points?

Gaze Nystagmus ☐ Yes ☒ No

Admitted drinking alcoholic beverage  
Slurred speech  
Impaired memory  
Glassy/bloodshot eyes  
Other \_\_\_\_\_

☒ Yes ☐ No  
☒ Yes ☐ No  
☒ Yes ☐ No  
☒ Yes ☐ No

Walk & Turn ☐ Yes ☒ No  
One Leg Stand ☐ Yes ☒ No  
Crash Involved ☐ Yes ☒ No  
Injury ☐ Yes ☒ No

Drugs Suspected: ☐ Yes ☒ No

Drug Recognition Evaluation Performed ☐ Yes ☒ No

Reason Drugs are Suspected: \_\_\_\_\_

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code. (MUST ARTICULATE IN NARRATIVE).

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Sections 18-8003 & 18-8004(4), Idaho Code and the standards and methods adopted by the Idaho State Police (ISP). (MUST ARTICULATE IN NARRATIVE).

BAC: by: ☐ Breath Instrument Serial#: 68-013786 Type: ☒ Intoxilyzer 5000 ☐ Alco Sensor ☐ Lifeloc  
☒ Blood AND/OR ☐ Urine Test Results Pending? ☒ Yes ☐ No (Attached)

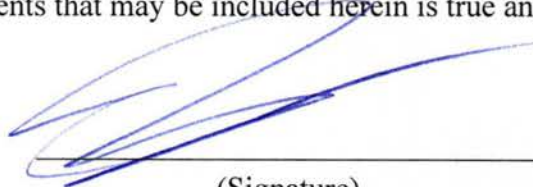
Name of person administering breath test: Jason R. Kelly Date certification expires: 09/30/2014

☐ Defendant refused the test as follows: \_\_\_\_\_

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief.

8-24-14

(Date)



(Signature)





# Notice of Suspension for Failure of Evidentiary Testing

(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

DR# 1410964

Issued To:

Last Name ORTIGA			First Gustaf	Middle BV	Date of Birth 7-15-85	County of Arrest FIFTI JUDICIAL DIST	Date of Arrest 8-24-14	Time of Arrest 1:45
Mailing Address 343 3rd Ave W Twin Falls					City Twin Falls	State ID	Zip 83301	Driver's License Number [REDACTED]
					State ID	License Class [REDACTED]	Operating CMV? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
					City Twin Falls	State ID	Zip 83301	Transporting Hazmat? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## Suspension Advisory

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances. You are required by law to take one or more evidentiary test(s) to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional test(s) made by a person of your own choosing. You do not have the right to talk to a lawyer before taking any evidentiary test(s) to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
  - You are subject to a civil penalty of two hundred fifty dollars (\$250).
  - You have the right to submit a written request within seven (7) days to the **Magistrate Court of Lemhi County** for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
  - If you do not request a hearing or do not prevail at the hearing, the court will sustain the civil penalty and your license will be suspended with absolutely no driving privileges for one (1) year if this is your first refusal; and two (2) years if this is your second refusal within ten (10) years.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
  - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty (30) days from the **date of service** on this notice suspending your driver's license or driving privileges. If this is your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for ninety (90) days with absolutely no driving privileges of any kind during the first thirty (30) days. You may request restricted non-commercial driving privileges for the remaining sixty (60) days of the suspension. Restricted driving privileges will not allow you to operate a commercial motor vehicle. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
  - You have the right to an administrative hearing on the suspension before the **Idaho Transportation Department** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and received by the department within seven (7) calendar days from the **date of service** on this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.
- If you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the purpose of getting to and from work, school, or an alcohol treatment program.

**NOTICE OF SUSPENSION** If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #3 above, commencing thirty (30) days from the date of service on this notice. If a blood or urine test was administered, the department may serve a **Notice of Suspension** upon receipt of the test results.

Date of Service: 8-24-14

**This Suspension for Failure or Refusal of the Evidentiary Test(s) is separate from any other Suspension ordered by the Court. Please refer to the back of this Suspension Notice for more information.**

Signature of Reporting Officer [Signature]	Print Name and I.D. Number of Reporting Officer Kell 4203	Agency Code 2703	Telephone Number 324-4328
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Department use only Failure: ☐ Breath ☒ Urine/Blood ☐ Refusal

White Copy - If failure - to ITD; if refusal - to Court

Yellow Copy - to Law Enforcement

Pink Copy - to Court

Goldenrod Copy - to Driver



# Suspension Information

The audio version of the Suspension Advisory substantially conforms to the written text of the Suspension Advisory.

## For Refusal of Evidentiary Testing (Pursuant to Section 18-8002, Idaho Code)

You have the right to submit a written request within seven (7) days to the Magistrate Court indicated on the face of this notice for a hearing to show cause why you refused to submit to or complete evidentiary testing. This is your opportunity to show cause why you refused to submit or failed to complete evidentiary testing and why your driver's license should not be suspended. **Note: A hearing request for refusing evidentiary testing must be submitted to the Magistrate Court.**

If you fail to request a hearing or do not prevail at the hearing, you are subject to a \$250 civil penalty and the court will suspend your driver's license and/or driving privileges with absolutely no driving privileges for one (1) year for your first offense, or for two (2) years for your second offense within ten (10) years (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).

## For Failing Evidentiary Testing (Pursuant to Section 18-8002A, Idaho Code)

You have been served this *Notice of Suspension* by a peace officer who had reasonable grounds to believe that you were operating a vehicle while intoxicated. After submitting to the test(s), you may, when practicable, have additional tests conducted at your own expense.

If you take the evidentiary test(s) and the results indicate an alcohol concentration of .08 or greater (.02 or greater if you are under 21 years of age), or the presence of drugs or other intoxicating substances in violation of the provisions of Sections 18-8004, 18-8004C, and 18-8006, Idaho Code, the peace officer shall:

1. Serve you with this *Notice of Suspension*, which becomes effective thirty (30) days after the date of service indicated on the reverse side of this notice. Failure of an evidentiary test will result in a ninety (90) day suspension of driving privileges, with absolutely no driving privileges during the first thirty (30) days of suspension. You may request restricted driving privileges during the final sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).
2. If you were operating or in physical control of a commercial vehicle and the evidentiary test results indicate an alcohol concentration of:
  - A. .04 to less than .08, your commercial driving privileges will be suspended for ninety (90) days. You will have absolutely no commercial driving privileges of any kind.
  - B. .08 or greater (.02 or greater if you are under 21 years of age), or test results that indicate the presence of drugs or other intoxicating substances, all of your driving privileges will be suspended for ninety (90) days, with possible non-commercial driving privileges for the final sixty (60) days of the suspension. You will have absolutely no commercial driving privileges of any kind during the full ninety (90) day suspension.
  - C. If this is not your first failure of an evidentiary test within the last five (5) years, all of your driving privileges will be suspended for one (1) year and you will have absolutely no driving privileges of any kind (unless you meet the provisions of paragraph 4 as noted in the Suspension Advisory on the reverse side).

## Hearing Request for Failure of Evidentiary Test

You have the right to request an administrative hearing on the suspension **before the Idaho Transportation Department**. Your request must be made in writing and be received by the department **no later than seven (7) calendar days after the date of service on this *Notice of Suspension***. The request **must state the issues intended to be raised at the hearing**, and must include your name, date of birth, driver's license number, date of arrest, and daytime telephone number because the hearing will be held by telephone. The burden of proof, by preponderance of evidence, shall be upon the driver as to the issues raised in the hearing, pursuant to Section 18-8002A(7), Idaho Code.

If you request a hearing, it shall be held within twenty (20) days of the date the hearing request was received by the Idaho Transportation Department (Section 18-8002A, Idaho Code). **If you do not request an administrative hearing within seven (7) days of service of this *Notice of Suspension*, your right to contest the suspension is waived. This suspension is separate and apart from any suspension that may be ordered by the court as a result of any criminal charges that may be brought against you.**

## Judicial Review

You may appeal the decision of the Hearing Officer by seeking judicial review to the District Court (Section 18-8002A, Idaho Code). Your appeal must be filed as a civil proceeding in the District Court, pursuant to Chapter 52, Title 67, Idaho Code.

## Restricted Driving Permits

If your driving privileges are suspended for a period of ninety (90) days pursuant to Section 18-8002A, Idaho Code, you may request restricted driving privileges for the final sixty (60) days of the suspension (IDAPA Rule 39.02.70). Restricted driving privileges will not allow you to operate a commercial motor vehicle. You may make your written request for restricted driving privileges at any time after the service of this *Notice of Suspension*.

## Reinstatement Requirements

Before being reinstated on this suspension, you will be required to pay a reinstatement fee. Any other suspension imposed by the court for this offense will require an additional reinstatement fee.

## **To request an administrative hearing or apply for a restricted driving permit relating to an administrative license suspension for failing evidentiary testing:**

- Make your request in writing, including a daytime telephone number, to the Idaho Transportation Department, Driver Services Section, PO Box 7129, Boise ID 83707-1129, or
- Fax your request to Driver Services at (208) 332-4124, or
- Email your request to [DriverRecords@itd.idaho.gov](mailto:DriverRecords@itd.idaho.gov)

*If you have questions or need additional information regarding this notice or your driving privileges, call Driver Services at (208) 334-8735.*




JEROME COUNTY JAIL  
INTOXILYZER - ALCOHOL ANALYZER  
MODEL 5000EN SN 68-013786  
08/24/2014 SOLUTION LOT NO. 12804

SUB NAME=ORTEGA, GABRIEL, V  
SUB DOB = [REDACTED]  
O.L.N.=ID [REDACTED]  
OPER NAME=KELLY, JASON, R  
ARREST AGENCY=2703

TEST	BrAC	TIME
AIR BLANK	.000	02:10 MDT
INTERNAL STANDARDS	PASSED	02:10 MDT
AIR BLANK	.000	02:10 MDT
SIMULATOR TEMPERATURE IN RANGE.		
SIM CHK #0014	.073	02:11 MDT
ACCEPTABLE		
AIR BLANK	.000	02:11 MDT
*SUBJECT TEST	.300	02:14 MDT
AIR BLANK	.000	02:15 MDT
SUBJECT TEST	REFUSED	02:18 MDT
AIR BLANK	.000	02:18 MDT

\* DEFICIENT SAMPLE - VALUE  
PRINTED WAS HIGHEST OBTAINED.

SUBJECT REFUSED TO CONTINUE.

  
\_\_\_\_\_  
OPERATORS SIGNATURE

  
\_\_\_\_\_  
TIME FIRST OBSERVED

0205

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN THE COUNTY OF JEROME  
MAGISTRATE DIVISION  
\*\*\*\*\*

The State of Idaho,  
Plaintiff

VS

Gabriel Ortega-Vastida

Defendant

Date: 9-15-14 Time: 9:15  
Presiding Judge: **THOMAS H. BORRESEN**

Case No. CR 2014-4282

Charges(s): DUI (Ex)

( ) Prosecutor: Sandra Scott

( ) Interpreter: Jesus Mendez

Session Name: ARRNAM 091514 KE

Deputy Clerk: **Katie Elliott**

- ( ) Verified True and correct name of Defendant.  
( ) Advised of alleged crime in Complaint.  
( ) Informed of his/her constitutional rights of plea of guilty.  
    ( ) Speedy and public trial by jury.  
    ( ) To see, hear, confront and have attorney question witnesses.  
    ( ) To present evidence in your behalf.  
    ( ) To the privilege against compulsory self-incrimination.  
( ) Defendant informed of his/her constitutional rights of plea of guilty  
    ( ) Waive constitutional right to a jury trial.  
    ( ) Give up right to confront witnesses against you.  
    ( ) Give up the privilege against self-incrimination.  
    ( ) Be required to take witness stand under oath for examination.  
    ( ) Waive any defenses to the charges in the complaint.  
    ( ) Any information given by the defendant under oath after plea of guilty, could and would be used against defendant.

Defendant enters plea of: ( ) Guilty ( ) Not Guilty ( ) NOSP signed

Court accepts plea of: ( ) Guilty ( ) Not Guilty ( ) Entered plea of not guilty on behalf of deft.

Public Defender Appointed: ( ) Yes ( ) No ( ) Cont. Appt ( ) Hire own  
    ( ) Deft. Makes too much ( ) Waived/Pro-se ( ) State seeks no jail time

Pre-trial Conference: 11-24-14 ( ) 1:45 p.m. ( ) 3:00 p.m.

Preliminary hearing requested: ( ) Yes ( ) Waived Date: \_\_\_\_\_ @ \_\_\_\_\_

Plea&Sentencing/ Sentencing: Date: \_\_\_\_\_ @ \_\_\_\_\_

( ) Drug/Alcohol Evaluation Required

\*\* COURT ORDERS: Fine \$: \_\_\_\_\_ Suspended \$: \_\_\_\_\_ + CC \$: \_\_\_\_\_

TOTAL FINE: \$: \_\_\_\_\_ Payment method: \_\_\_\_\_

JAIL TIME: \_\_\_\_\_ Days, Suspended: \_\_\_\_\_ Days, Credit: \_\_\_\_\_, Serve \_\_\_\_\_ Days.

PROBATION: \_\_\_\_\_ Years, \_\_\_\_\_ Months, ( ) Supervised ( ) Unsupervised ( ) \$20 mo. ( ) \$50 mo.

LICENSE SUSPENSION \_\_\_\_\_ Days OTHER \_\_\_\_\_

\*\* COURT ORDERS: Fine \$: \_\_\_\_\_ Suspended \$: \_\_\_\_\_ + CC \$: \_\_\_\_\_

TOTAL FINE: \$: \_\_\_\_\_ Payment method: \_\_\_\_\_

JAIL TIME: \_\_\_\_\_ Days, Suspended: \_\_\_\_\_ Days, Credit: \_\_\_\_\_, Serve \_\_\_\_\_ Days.

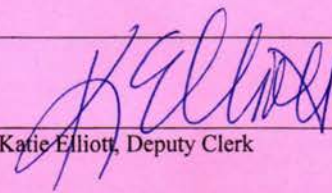
PROBATION: \_\_\_\_\_ Years, \_\_\_\_\_ Months, ( ) Supervised ( ) Unsupervised ( ) \$20 mo. ( ) \$50 mo.

LICENSE SUSPENSION \_\_\_\_\_ Days OTHER \_\_\_\_\_

PROBATION STATUS HEARING: \_\_\_\_\_

STATE: \_\_\_\_\_

Address/Phone Number \_\_\_\_\_

  
Katie Elliott, Deputy Clerk



EN LA CORTE DEL QUINTO DISTRITO JUDICIAL  
DEL ESTADO DE IDAHO, CONDADO DE JEROME, DIVISIÓN DEL MAGISTRADO

ESTADO DE IDAHO,

vs.

*Gabriel Ortega-Vastida*

2014 SEP 17 PM 2 35  
Michelle Emerson

NUMERO DE CASO **CR2014-4282**

CLERK  
BY *K. Elliott*  
DEPUTY CLERK

**DECLARACIÓN DE DERECHOS DEL  
ACUSADO EN CASOS  
DE DELITOS MENORES**

DEMANDADO

1. Usted tiene el derecho de quedarse callado; cualquier cosa que usted diga puede ser usada contra usted. No le pueden obligar a incriminarse a usted mismo.
2. Usted tiene el derecho a fianza. La cantidad o tipo de fianza o liberación en su propio reconocimiento es determinada por el juez después de considerar los hechos proveídos por la ley.
3. Usted tiene el derecho de ser representado por un abogado en cada etapa de estos procedimientos. Si usted es pobre y no puede emplear (pagar) un abogado, y si la corte determina que usted es propenso a una sentencia de cárcel si a usted le declaran culpable, usted puede aplicar o pedir a la corte que le nombre a un abogado que le represente al costo público.
4. Usted tiene el derecho a un juicio frente de un jurado o puede renunciar este derecho y presentar su caso ante un juez. En su juicio, el abogado acusador tiene que probarle culpable sin ninguna duda razonable. Cualquier veredicto de culpable por un jurado tiene que ser unánime.
5. Usted tiene el derecho de confrontar o hacer preguntas a cualquier testigo que de testimonio contra usted. Usted también puede obligar la asistencia de testigos en su favor, sin costo a usted.
6. A esta tiempo usted puede declararse culpable o no culpable o pedir una continuación a la corte para consultar con su abogado.
7. Si usted se declara culpable usted renuncia o rechaza todos los derechos mencionados, y usted renuncia o rechaza cualquiera defensa que usted tenga en la queja archivada contra usted.
8. Usted tiene el derecho de apelar su convicción o sentencia a la corte mayor del Distrito. La apelación tiene que ser archivada dentro de cuarenta y dos (42) días después de ser sometida la convicción de sentencia.
9. Si usted se declara no culpable, la corte fijará una fecha para su juicio y usted o su abogado serán notificados de aquella fecha.
10. Si usted se declara culpable, la corte le sentenciará inmediatamente solo que usted pida una dilación. Al tiempo que le sentencien, usted tendrá la oportunidad de dar explicación o mitigación.
11. La pena máxima por un delito menor criminal es una multa de mil (\$1000.00) dólares y hasta seis (6) meses de cárcel. Hay excepciones, y si usted está propenso a una pena más grave, la corte le avisará.
12. Si usted se declara ser culpable, o si el juez o el jurado le encuentran ser culpable de una violación de tráfico la orden de su convicción será enviada al Departamento de Transportación y será registrada en su record de manejar. Se usa un sistema de puntos por violaciones de tráfico y si usted acumula muchos puntos se le puede suspender su licencia de manejar si no ha sido suspendida ya por un juez.
13. Al ser encontrado culpable, usted también tendrá que pagar los costos de la corte.

Yo declaro que he leído esta declaración y entiendo el contenido.

Firmado el día 15 del mes de September, 20 14.

Demandado: *Gabriel Ortega*



DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
**EN LA CORTE DEL QUINTO DISTRITO JUDICIAL  
DEL ESTADO DE IDAHO, CONDADO DE JEROME, DIVISIÓN DEL MAGISTRADO**

2014 SEP 17 PM 2 35

ESTADO DE IDAHO,

vs.

**Gabriel Ortega-Vastida**

NUMERO DE CASO **CR2014-4282**

*Michelle Emerson*

BY

*K. Elliott*

**DECLARACIÓN DE DERECHOS DEL ACUSADO  
EN CASOS DE MANEJAR BAJO LA INFLUENCIA  
DEL ALCOHOL O DROGAS (DUI)**

**DEMANDADO**

1. Usted tiene el derecho de quedarse callado; cualquier cosa que usted diga puede ser usada contra usted. No le pueden obligar a incriminarse a usted mismo.
2. Usted tiene el derecho a fianza. La cantidad o tipo de fianza o liberación en su propio reconocimiento es determinada por el juez después de considerar los hechos proveídos por la ley.
3. Usted tiene el derecho de ser representado por un abogado en cada etapa de estos procedimientos. Si usted es pobre y no puede emplear (pagar) un abogado, y si la corte determina que usted es propenso a una sentencia de cárcel si a usted le declaran culpable, usted puede aplicar o pedir a la corte que le nombre a un abogado que le represente al costo público.
4. Usted tiene el derecho a un juicio frente de un jurado o puede renunciar este derecho y presentar su caso ante un juez. En su juicio, el abogado acusador tiene que probarle culpable sin ninguna duda razonable. Cualquier veredicto de culpable por un jurado tiene que ser unánime.
5. Usted tiene el derecho de confrontar o hacer preguntas a cualquier testigo que de testimonio contra usted. Usted también puede obligar la asistencia de testigos en su favor, sin costo a usted.
6. A este tiempo usted puede declararse culpable o no culpable o pedir una continuación a la corte para consultar con su abogado.
7. Si usted se declara culpable usted renuncia o rechaza todos los derechos mencionados, y usted renuncia o rechaza cualquiera defensa que usted tenga en la queja archivada contra usted. Específicamente, con declararse culpable usted renuncia o rechaza su derecho contra la autoincriminación; esto es, su derecho de quedarse callado o de no incriminarse a usted mismo. Usted también renuncia o rechaza su derecho de tener un juicio frente el jurado y el derecho de confrontar testigos que estén contra usted. Estos derechos los renuncia cuando se declara culpable en el caso pendiente en la corte a este tiempo.
8. Usted tiene el derecho de apelar su convicción o sentencia a la Corte mayor del Distrito. La apelación tiene que ser archivada dentro de cuarenta y dos (42) días después de ser sometida la convicción de sentencia.
9. Si usted se declara no ser culpable, la corte fijará el día de juicio y usted o su abogado serán notificados de aquella fecha.
10. Si usted se declara culpable, la corte fijará una fecha para la sentencia. Antes de la sentencia se le requiere tener una evaluación del alcohol a costo suyo. Esta evaluación será considerada por la corte en determinar la sentencia apropiada. En la sentencia de usted se le dará la oportunidad de dar explicación o mitigación.
11. Si usted se declara ser culpable o el jurado o el juez le declaran ser culpable de haber manejado bajo la influencia del alcohol, las penas mínimas y máximas son:

(a) Si es su primera violación de manejar bajo la influencia: hasta seis (6) meses en la cárcel, una multa de hasta mil dólares (\$1,000.00), y suspensión de sus privilegios de manejar por un período de treinta (30) días que no será reducido y durante este período de treinta (30) días absolutamente no le puede dar ningún privilegio de manejar. Después de que el período de treinta (30) días de suspensión absoluta de sus privilegios de manejar se haya pasado, sus privilegios de manejar serán suspendidos por las corte (juez) por un período de por lo menos sesenta (60) días adicionales, pero no pasará ciento cincuenta (150) días.

(b) Por la segunda violación de manejar bajo la influencia (dentro de un período de cinco (5) años): por lo menos diez (10) días en la cárcel; de éstos, las primeras cuarenta y ocho (48) horas tienen que ser servidas consecutivas (seguidas), pero no más de un (1) año en la cárcel; una multa de hasta dos mil dólares (\$2,000.00); y una suspensión de sus privilegios de manejar por un (1) año después de que salga de la cárcel y absolutamente no se le puede dar ningún privilegio de manejar.

(c) Por la tercera violación de manejar bajo la influencia (dentro de un período de cinco (5) años); un delito mayor (felonia), por lo menos treinta (30) días en la cárcel del condado; hasta cinco (5) años en la prisión del estado; una multa de cinco mil dólares (\$5,000.00); y suspensión de sus privilegios de manejar por lo menos por un (1) año pero no más de cinco (5) años después de que salga del encarcelamiento.

(d) Si usted tiene licencia clasificada A, B, o C, usted no tiene el derecho a privilegio restringido de manejar.

12. Si usted se declara por culpable o le declaran culpable de manejar bajo a influencia del alcohol, y si la concentración es 0.20% o más, según el análisis que enseñe su sangre, el aliento, o las orinas, las penas mínimas y máximas son:

(a) Por primera ofensa de DUI con concentración de alcohol de 0.20 o más, el castigo es como se explicó para la segunda ofensa en párrafo 11(b) ya mencionado.

(b) Por segunda ofensa (dentro de cinco (5) años, con la ofensa previa teniendo concentración de alcohol de 0.20 o más también), los castigos son como se explicaron en la tercera ofensa (delito grave) en el párrafo 11(c), ya mencionado.

Yo declaro que he leído esta declaración y entiendo en contenido.

Firmado el día 15 del mes de September, 20 14.

Demandado: Gabriel Ortega

EN LA CORTE DEL QUINTO DISTRITO JUDICIAL  
DEL ESTADO DE IDAHO, CONDADO DE JEROME, DIVISIÓN DEL MAGISTRADO

ESTADO DE IDAHO,

2014 SEP 17 PM 3 35

NUMERO DE CASO: CR2014-4282

vs.

Gabriel Ortega-Vastida

Michelle Emerson

BY

CLERK  
K. Elliott  
DEPUTY CLERK

NOTIFICACIÓN DE CASTIGOS POR  
VIOLACIÓN SUBSIGUENTE POR  
MANEJAR BAJO LA INFLUENCIA  
DEL ALCOHOL (DUI)

**AL ACUSADO YA MENCIONADO:**

**POR LA PRESENTE SE LE NOTIFICA** de que si usted se declara por culpable o lo declaran por culpable en el futuro de un DUI, el castigo será lo siguiente:

1. UNA VIOLACIÓN DE DUI POR SEGUNDA VEZ dentro de cinco (5) años con inclusión de sentencias retenidas, es un delito menor; y a usted:

- (a) Le darán una sentencia obligatoria de cárcel de un período mínimo de no menos de diez (10) días, las primeras cuarenta y ocho (48) horas serán seguidas, y lo sentenciarán por no más de un (1) año, y
- (b) Podrá recibir una multa de hasta dos mil dólares (\$2,000.00);
- (c) Tendrá sus privilegios de manejar suspendidos por un tiempo mínimo de un (1) año. Durante este período no le darán absolutamente nada de privilegios de manejar.

2. DOS VIOLACIONES DE DUI: cuando las dos violaciones de manejar involucran una concentración de alcohol de 0.20% o más dentro de cinco (5) años, y un TERCERA VIOLACIÓN DE DUI dentro de cinco (5) años, o una violación de DUI SUBSIGUENTE con un DUI DE DELITO GRAVE dentro de diez (10) años con inclusión de sentencias retenidas, es un DELITO GRAVE, y a usted:

- (a) Lo sentenciarán a la prisión del estado por no más de cinco (5) años, pero si la corte impone una sentencia de cárcel en vez de la prisión del estado, será por un período mínimo de no menos de treinta (30) días, y
- (b) Podrá recibir una multa de hasta cinco mil dólares (\$5,000.00);
- (c) Tendrá sus privilegios de manejar suspendidos por hasta un (1) año y no más de cinco (5) años después de su libertad del encarcelamiento;
- (d) Solamente podría conducir vehiculos equipados con un sistem funcional que impide el arranque, empezando a partir de la fecha de terminacion del periodo de suspension de un año.

**HE LEÍDO ESTE DOCUMENTO EN SU TOTALIDAD. ME LO HAN EXPLICADO Y HE RECIBIDO UNA COPIA.**

FECHA el día 15 del mes de September, 20 14.

DEMANDADO: Gabriel ortega



EN EL TRIBUNAL DISTRICTO DEL QUINTO DISTRICTO JUDICIAL  
DEL ESTADO DE IDAHO, EN Y PARA EL CONDADO DE JEROME  
DIVISION DE MAGISTRADO

EL ESTADO DE IDAHO,

El Demandante,

VS.

Gabriel Ortega-Vastida

El Acusado.

2014 SEP 17 PM 2 35

NUMERO DE CASO: CR2014-4282

CLERK

ABOGADO DEFENSOR PUBLICO ORDEN DE CITA  
Y AUDENCIA PREVIA A JUICIO

ORDEN DE CITA CON EL ABOGADO DEFENSOR PUBLICO

Se le han asignado los servicios del abogado defensor público. Usted es ORDENADO para ser una cita y que consulte con su abogado defensor público NO MÁS de cinco (5) días ANTES de su audiencia previa a juicio aquí mencionada. SI USTED FALTA A SU CITA CON EL ABOGADO DEFENSOR PUBLICO. ESTO RESULTARA EN UNA VIOLACION DE LAS CONDICIONES DE SU LIBERTAD PREVIA A JUICIO Y UNA ORDEN DE ARESTO SERA PUESTA EN SU CONTRA. Para sacar una cita con su abogado defensor publico, comuníquese a la oficina del Abogado Defensor Publico del Condado de Jerome a (208) 324-7200. Por favor matanga su numero de caso y su fecha de la siguiente audiencia previa a juicio fácilmente y disponible.

ORDEN DE CONFERENCIA PREJUICO

Usted esta además ORDENADO a aparecer personalmente en el tribunal del Judicial Annex en el 24 día de November, 2014, a las 3:00 p.m. para su audiencia previa a juicio en el asunto arriba titulado. Los partidos o sus abogados están ordenados a estar preparados a discutir la ley y de los hechos circundantes a este asunto y avisarle al tribunal si es que el asunto necesita ser puesto para juicio o' si otra resolución es anticipada si usted. FALTA DE APARECER Y ESTAR PREPARADO AUDIENCIA PREVIA JUICIO SERA UN VIOLACION DE LAS CONDICIONES DE LIBERTAD PRE JUICIO Y UNA ORDEN DE ARESTO SERA PUESTA EN SU CONTRA Y/O' IMPOSICION DE SANCIONES DE DESPRECIO.

Defendiente acusa recibo de una copia de esta ORDEN y además verifica que el domicilio y número telefónico puestos abajo es el domicilio corriente de el Acusado. El Acusado reconoce su deber para guardar al defensor publico y la Corte avisados de su domicilio corriente y numero de teléfono. FALTA DE INFORMAR EL TRIBUNAL Y SU ABOGADO DEFENSOR PUBLICO AVISADOS DE SU DOMICILIO CORRIENTE Y NUMERO DE TELEFONO SERA CONSIDERADO UNA VIOLACION DE LAS CONDICIONES DE SU LIBERTAD PREVIA A JUICIO Y UNA ORDEN DE ARRESTO SERA PUESTA EN SU CONTRA.

FECHA: 9 15 14

DEFENDIENTE: Gabriel Ortega V

Domicilio: 343 - 3VA AVE Tihifex

Num. de Telefono: Hogar \_\_\_\_\_ Trabajo \_\_\_\_\_ Mensaje \_\_\_\_\_.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

STATE OF IDAHO  
Plaintiff,  
vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB:  
DL:

2014 SEP 17 PM 2:35

*Michelle Emerson*

CLERK

BY

*K. Elliott*  
DEPUTY CLERK

Case No: CR-2014-0004282

ORDER APPOINTING PUBLIC DEFENDER

The Court being fully advised as to the application of GABRIEL ORTEGA-VASTIDA, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that attorney

Jeremy L Pittard  
121 3rd Avenue E.  
Jerome ID 83338  
(208) 324-7200

Public Defender for the County of Jerome, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, GABRIEL ORTEGA-VASTIDA, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 9-17-14

*Thomas H. Benes*  
Judge

Copies to: ☒ Public Defender

☒ Prosecutor - Brian J Williams

9-17-14  
Date

*[Signature]*  
Deputy Clerk

BY: Michelle Emerson  
DEPUTY CLERK



influence of alcohol, drugs and/or other intoxicating substances and/or with a blood alcohol concentration of .08 or more.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Pursuant to Idaho Criminal Rule 3, complaint is hereby signed before a magistrate based upon the sworn affidavit of a complainant herein filed with the court.

  
Jerome County Deputy Prosecutor

SIGNED before me this 4<sup>th</sup> day of November, 2014.

  
Judge



Michelle Emerson  
BY: *[Signature]*  
DEPUTY CLERK



pleading guilty or having been found guilty of said crime in Jerome County Case No. CR 2004-2082 for an incident, which occurred on or about 4<sup>th</sup> day of July, 2014.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Pursuant to Idaho Criminal Rule 3, complaint is hereby signed before a magistrate based upon the sworn affidavit of a complainant herein filed with the court.

  
Jerome County Deputy Prosecutor

SIGNED before me this 4<sup>th</sup> day of November, 2014.

  
Judge



JOHN L. HORGAN  
Jerome County Deputy Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 NOV 5 PM 1 39

Michelle Emerson  
BY:   
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR JEROME COUNTY

\*\*\*\*\*

THE STATE OF IDAHO,	)	CASE NO: CR 2014-4282
	)	
Plaintiff,	)	VERIFIED APPLICATION FOR
	)	BOND REVOCATION
	)	
vs.	)	
	)	
GABRIEL ORTEGA-VASTIDA,	)	I.C.R. 46 (i)
	)	
Defendant.	)	

COMES NOW, Sandra L. Scott Deputy Prosecuting Attorney for the County of Jerome, State of Idaho, and respectfully makes application to the Court as follows:


1. I am a Jerome County Deputy Prosecutor.
2. On or about August 24, 2014, Defendant was arrested on a misdemeanor charge of Driving Under the Influence of Alcohol, and posted a \$1,000.00 bond.
3. On or about September 15, 2014, Defendant was arraigned on said misdemeanor charge, in the Jerome County Magistrate court.
4. On or about October 31, 2014 the defendant was arrested in Twin Falls Idaho and charged with a Felony DUI.

5. On or about November 4, 2014, the misdemeanor charge of Driving Under the Influence of Alcohol in the above captioned case was amended to a felony Driving Under the Influence of Alcohol, based on a prior felony DUI conviction in 2004.

Whereas, your applicant prays as follows:

1. That an arrest warrant pursuant to ICR 46(i) issue immediately,
2. That the court set a date for hearing this Application,
3. That Defendant's bond be revoked,
4. For such further relief as the Court deems just.

Dated this 4<sup>th</sup> day of November, 2014.




Sandra L. Scott,  
Jerome County Deputy Prosecutor

State of Idaho           )  
                                  ) ss  
County of Jerome       )

On this 4<sup>th</sup> day of November, 2014, before me, the undersigned, a Notary Public in and for the County of Jerome, State of Idaho, personally appeared Sandra L. Scott, known to me to be the person whose name is subscribed to the within and foregoing instrument, and did verify to me that he believes the facts stated in the foregoing Application to be true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



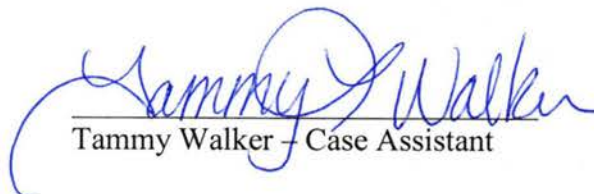
NOTARY PUBLIC for Idaho  
Residing at: Jerome, ID  
Commission Expires: 3/19/15



CERTIFICATE OF MAILING

I hereby certify that on this 4th day of November, 2014, I served a true and correct copy of the NOTICE OF HEARING upon the following person (s) named below, to be mailed or hand delivered to the following:

Jeremy Pittard  
Office of the Public Defender  
121 3<sup>rd</sup> Ave. East  
Jerome, ID 83338

  
Tammy Walker - Case Assistant



JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, ID 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 NOV 6 PM 1 40

Michelle Emerson

BY: [Signature]  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
MAGISTRATE DIVISION

\* \* \* \* \*

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

) Case No.: CR 2014-4282  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

ORDER TO TRANSPORT

\* \* \* \* \*

IT IS HEREBY ORDERED that the patient, GABRIEL ORTEGA-VASTIDA is to be transported by the Jerome County Sheriff's Department from the Twin Falls County Jail, in Twin Falls, Idaho, to Jerome County Judicial Annex **on November 14, 2014, for a hearing at 1:30 p.m.**, and will return GABRIEL ORTEGA-VASTIDA to the Twin Falls County Jail, upon completion of the scheduled hearing unless otherwise ordered by this Court.

DATED this 16<sup>th</sup> day of November, 2014

JUDGE

Thomas H. Buresen



DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 NOV 7 PM 4 45  
Michelle Emerson

BY: [Signature]  
CLERK

RETURN OF SERVICE

SHERIFF'S OFFICE

STATE OF IDAHO, } ss. State of Idaho Plaintiff  
County of Jerome } Ortega-Vestido, Gabriel Defendant  
I, \_\_\_\_\_ Sheriff of Said Jerome County,  
hereby certify that I received the hereto annexed (F) CR-2014-4282  
on the 4<sup>th</sup> of November, 20 14 and personally served copies thereof  
on defendant Ortega-Vestido, Gabriel  
by serving Ortega-Vestido, Gabriel said defendants personally  
in said Jerome County, on the 6<sup>th</sup> day of Nov, 20 14.  
Dated at Jerome Idaho this 6<sup>th</sup> day of Nov, 20 14.

\_\_\_\_\_  
Sheriff  
By Twain Falls  
Deputy Sheriff  
(In Custody)

JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB No. 3068

BOND: 50,000.00

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
MAGISTRATE DIVISION

\*\*\*\*\*

STATE OF IDAHO,	)	Case No.: CR 2014-4282
	)	
Plaintiff,	)	
	)	
vs.	)	WARRANT OF ARREST
	)	
GABRIEL ORTEGA-VASTIDA,	)	
Last Known Address:	)	
343 3 <sup>rd</sup> Ave. West	)	
Twin Falls, ID 83301	)	
SSN/OLN: [REDACTED]	)	
DOB: [REDACTED]	)	
	)	
Defendant.	)	

TO ANY SHERIFF, CONSTABLE, OR POLICEMAN OF THE STATE OF IDAHO:

THIS IS TO COMMAND YOU, the Sheriff of Jerome County, Idaho, or any peace officer of this State, to forthwith arrest the above-named defendant and bring the defendant before the Court for further proceedings in the above-entitled Court, and;

A Verified Application for Bond Revocation, signed and filed by the Jerome County Deputy Prosecutor :

WARRANT OF ARREST - 1




THEREFORE, you are hereby commanded forthwith to arrest the above named GABRIEL ORTEGA-VASTIDA and bring him before me at my office in the Jerome County Court, Jerome County, State of Idaho, or in case of my absence or inability to act, before the nearest or most accessible Judge in said county of Jerome, State of Idaho.

IT IS HEREBY ORDERED That if for any reason the said defendant cannot, immediately upon arrest, be brought before one of the Judges of the above-entitled Court, he be admitted to bail in the sum of 50,000.<sup>00</sup>, conditioned that the said defendant shall appear in person before one of the Judges of the above-entitled Court upon the date fixed for hearing.

DATED this 4<sup>th</sup> day of November, 2014, at the hour of 4:17 a.m./p.m.

John W. Burns  
JUDGE

A circular blue ink stamp is located to the right of the judge's signature. The text around the perimeter of the seal reads "SEAL OF THE DISTRICT COURT, JEROME COUNTY, IDAHO". In the center of the seal, the words "CLERK OF COURT" are visible.

Day or Night

WARRANT INFORMATION SHEET

Felony X

Misdemeanor     

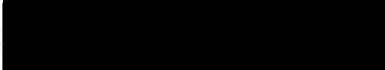
DEFENDANT'S NAME:

GABRIEL ORTEGA-VASTIDA

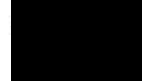
LAST KNOWN ADDRESS:

343 3<sup>rd</sup> Ave. West  
Twin Falls, Idaho 83301

OLN/SSN:



DOB:



PHYSICAL DESCRIPTION:

Sex: Male  
Hgt: 5'1"  
Wgt: 140

Eyes: Brown  
Hair: Brown  
Other:

RELATIVES, FRIENDS, EMPLOYERS: Unknown

OTHER RELEVANT INFORMATION REGARDING DEFENDANT: *Currently in custody  
In Twin Falls County Jail*

WARRANT REQUESTED BY JEROME COUNTY.

EXTRADITION LIMITS:

☐ IDAHO ONLY

☒ *SS* SURROUNDING STATES

☐ ALL STATES

☐ \_\_\_\_\_

JOHN L. HORGAN  
Jerome County Deputy Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 NOV 5 PM 1 39

*Michelle Emerson*

CLERK  
BY *K. Elliott*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR JEROME COUNTY

\*\*\*\*\*

THE STATE OF IDAHO,	)	CASE NO: CR 2014-4282
	)	
Plaintiff,	)	VERIFIED APPLICATION FOR
	)	BOND REVOCATION
	)	
vs.	)	
	)	
GABRIEL ORTEGA-VASTIDA,	)	I.C.R. 46 (i)
	)	
Defendant.	)	

COMES NOW, Sandra L. Scott Deputy Prosecuting Attorney for the County of Jerome, State of Idaho, and respectfully makes application to the Court as follows:

1. I am a Jerome County Deputy Prosecutor.
2. On or about August 24, 2014, Defendant was arrested on a misdemeanor charge of Driving Under the Influence of Alcohol, and posted a \$1,000.00 bond.
3. On or about September 15, 2014, Defendant was arraigned on said misdemeanor charge, in the Jerome County Magistrate court.
4. On or about October 31, 2014 the defendant was arrested in Twin Falls Idaho and charged with a Felony DUI.

5. On or about November 4, 2014, the misdemeanor charge of Driving Under the Influence of Alcohol in the above captioned case was amended to a felony Driving Under the Influence of Alcohol, based on a prior felony DUI conviction in 2004.

Whereas, your applicant prays as follows:

1. That an arrest warrant pursuant to ICR 46(i) issue immediately,
2. That the court set a date for hearing this Application,
3. That Defendant's bond be revoked,
4. For such further relief as the Court deems just.

Dated this 4<sup>th</sup> day of November, 2014.




Sandra L. Scott,  
Jerome County Deputy Prosecutor

State of Idaho           )  
                                  ) ss  
County of Jerome       )

On this 4<sup>th</sup> day of November, 2014, before me, the undersigned, a Notary Public in and for the County of Jerome, State of Idaho, personally appeared Sandra L. Scott, known to me to be the person whose name is subscribed to the within and foregoing instrument, and did verify to me that he believes the facts stated in the foregoing Application to be true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



  
NOTARY PUBLIC for Idaho  
Residing at: Jerome, ID  
Commission Expires: 3/19/15

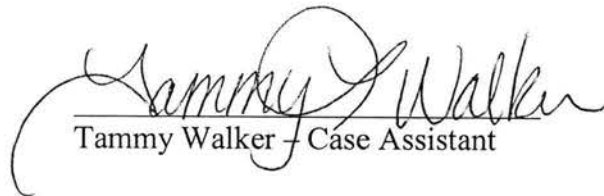




CERTIFICATE OF MAILING

I hereby certify that on this 4th day of November, 2014, I served a true and correct copy of the NOTICE OF HEARING upon the following person (s) named below, to be mailed or hand delivered to the following:

Jeremy Pittard  
Office of the Public Defender  
121 3<sup>rd</sup> Ave. East  
Jerome, ID 83338

  
Tammy Walker - Case Assistant

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

2014 NOV -7 PM 2:53

2014 NOV 12 PM 3:29

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

MAGISTRATE DIVISION

BY Mitchell Emerson  
ARRAIGNMENT MINUTES

CLERK

DEPUTY

Date 11/7/14 Time 1:00pm Counter 131 Case No. OCW - Jerome  
Judge Harris Deputy Clerk J. Petersen Interpreter Erica Dela Rosa Ctrm # 3

State of Idaho

Attorney \_\_\_\_\_

vs

Gabriel Ortega-Bastida

Attorney \_\_\_\_\_

Offense: Serome - OCW (1-Warrant)

☒ Appeared in person ☐ Border Patrol Hold ☒ Bond 50,000 ☒ per warrant(s) ☐ to be held without bond  
☐ OR release ☐ To serve \_\_\_\_\_ days per warrant ☐ Walk In Arraignment/Summons ☐ Bond previously posted ☐ Court Compliance program  
☐ AGENT'S WARRANT - ~~To be replaced in 72 hours or defendant to be released~~  
☐ Failed to appear ☐ Warrant issued ☐ Forfeit previous bond ☐ Bond \_\_\_\_\_

☒ Complaint read ☐ Probation violation read ☒ Defendant waived reading of probation violation  
☒ Rights and penalties given ☒ Rights form signed ☒ Rights and penalties understood

☐ Defendant waived counsel ☐ Private counsel \_\_\_\_\_ ☐ to hire  
☐ Public defender appointed ☐ Public defender denied ☐ Public defender confirmed/continued

<input type="checkbox"/> Plead not guilty	<input type="checkbox"/> Pretrial _____
<input type="checkbox"/> Plead guilty	<input type="checkbox"/> Court trial _____
	<input type="checkbox"/> Jury trial _____
<input type="checkbox"/> Court accepted plea	<input type="checkbox"/> Sentencing _____
	<input type="checkbox"/> Prelim _____
	<input type="checkbox"/> Fugitive (identity) _____
	<input type="checkbox"/> Arraignment _____
	<input type="checkbox"/> Hearing to be set <input type="checkbox"/> Other _____
<input type="checkbox"/> PV - admit	<input type="checkbox"/> Admit/Deny _____
<input type="checkbox"/> PV - deny	<input type="checkbox"/> Evidentiary _____
	<input type="checkbox"/> Disposition _____

Conditions of bond/OR release/probation:

☐ Check in with public defender immediately upon release  
☐ Check in with court compliance officer; Pay costs associated with court compliance ☐ SCRAM unit authorized  
☐ Court entered no contact order  
☐ To be transported to \_\_\_\_\_ ☐ Report to jail. Court signed book and release order

2014 NOV -7 PM 2:53

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
MAGISTRATE DIVISION

CLERK

STATE OF IDAHO,

Plaintiff,

vs.

ORTEGA, GABRIEL

BASTIDA

Defendant.

CASE NO: \_\_\_\_\_

DEPUTY

NOTIFICATION OF RIGHTS--  
FELONY

The purpose of this initial appearance is to advise you of your rights and charge(s) against you.

- You have the right to be represented by an attorney at all times.
- If you want an attorney, but cannot pay for one, the court will appoint one to help you. If you are found guilty or plead guilty, you may be ordered to reimburse Twin Falls County for the cost of your defense.
- You have the right to remain silent. Any statement you make could be used against you.
- You have the right to bail.
- You have the right to a preliminary hearing before a judge.
- The purpose of a preliminary hearing is to determine whether probable cause exists to believe you have committed the crime(s) charged. A preliminary hearing is not a trial to decide guilt or innocence.
- You can cross-examine all witnesses who testify against you.
- You can present evidence, testify yourself if you wish, and have witnesses ordered to testify by subpoena.
- If the court finds probable cause exists that you committed the crime(s) charged, or if you waive your preliminary hearing, you will be sent to the District Court for arraignment.

If you have any questions about the charge(s), about your rights or the court process, don't hesitate to speak up. It is important that you understand.

**Acknowledgment of Rights**

I have read this entire document and I understand these rights as set forth above.

11-7-14  
Date

Ernesto Bastida  
Defendant's signature

NOTIFICATION OF RIGHTS--1

Interp.  
Ernesto



# WARRANT / SUMMONS SERVED

DELETED COMPUTER

Date: 11-10-14  
DISTRICT COURT  
Time: 1540  
By: FILED

Print or Type

DATE: 11-10-14 TIME: 1540 WARRANT NO: 2014-11-1282  
DEFENDANT: Ortega-Vasfida, Gabriel BY: [REDACTED]  
DOB: [REDACTED] SOCIAL SECURITY # [REDACTED]  
ADDRESS: 300 Blue Lakes Blvd S. Twin Falls, ID DEPUTY  
ARRESTING AGENCY: Twin Falls Sheriff  
OFFICER: Van Iante 1145  
ORIGINATING AGENCY: Jerome  
CHARGE: ORI [REDACTED] F Felony ☒ Misd. ☐  
IN CUSTODY (where) Twin Falls  
BONDED: YES ☐ NO ☐ AMOUNT OF BOND \$ 50,000  
RELEASED (O.R.) OWN RECOGNIZANCE YES ☐ NO ☐

WHITE - Magistrate Court

YELLOW - Originating Agency

PINK - Jail

**COPY**

GABRIEL ORTEGA-VASFIDA,  
Last Known Address:  
343 3<sup>rd</sup> Ave. West  
Twin Falls, ID 83301  
SSN/OLN: [REDACTED]  
DOB: [REDACTED]

Defendant.

TO ANY SHERIFF, CONSTABLE, OR POLICEMAN OF THE STATE OF IDAHO:

THIS IS TO COMMAND YOU, the Sheriff of Jerome County, Idaho, or any peace officer of this State, to forthwith arrest the above-named defendant and bring the defendant before the Court for further proceedings in the above-entitled Court, and;

A Verified Application for Bond Revocation, signed and filed by the Jerome County Deputy Prosecutor;

WARRANT OF ARREST - 1

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

**JEREMY L. PITTARD**

121 3<sup>rd</sup> Avenue East

Jerome, Idaho 83339

Telephone: (208) 324-7200

Facsimile: (208) 324-7206

ISB No.: 8003

2014 NOV 13 AM 10 04

Michelle Emerson

BY *[Signature]*  
DEPUTY CLERK

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,  
Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,  
Defendant.

CASE NO.: CR-2014-4282

**SECOND AMENDED ORDER  
TO TRANSPORT**

IT IS HEREBY ORDERED That the Jerome County Sheriff's Department shall transport the above-named Defendant, Gabriel Ortega-Vastida, from the Twin Falls County Jail, located in Twin Falls, Idaho, to his MOTION TO REVOKE BOND HEARING in front of the Honorable Thomas H. Borresen at the Jerome County Annex, on the 14<sup>th</sup> day of November, 2014, at the hour of 1:30 p.m.; as well as, his PRETRIAL CONFERENCE on the 24<sup>th</sup> day of November, 2014 at 3:00 p.m.

DATED This 13 day of November, 2014.

*Thomas H. Borresen*  
Honorable

Order to Transport-

cc: jail/prosecutor/public defender/Steve Byers

1



COURT MINUTES

CR-2014-0004282

State of Idaho vs. Gabriel Ortega-Vastida

Hearing type: Motion to Revoke Bond

Hearing date: 11/14/2014

Time: 1:30 pm

Judge: Thomas H. Borresen

Courtroom: 1

Minutes Clerk: Katie Elliott

Defense Attorney: Mark Coppin

Prosecutor: Sandra Scott

Jesus Mendez, Interpreter, Duly Sworn

1:31- Court- Calls case. All parties are present in the courtroom. Gabriel Ortega-Vastida (I/C) Goes over the rights of a felony case. Reads amended complaints filed. Arraigns Mr. Ortega-Vastida.

1:33-Scott- Did submit an affidavit. Defendants BAC .300. High BAC. Due to the prior DUI, Defendant and since got a Felony DUI in Twin Falls. That is how the city prosecutor found out. Due to the high risk and his history, \$50,000 remain in effect. Has a \$100,000 bond in Twin Falls. Between those 2 bonds should keep the public safe. If he does bond out, no alcohol, and daily BAC.

1:36-Coppin- No objection to the bond, so he can get time served. Any bond that he posts should be for both cases. He should not have to posts two bonds.

1:37-Court- Bond remain as set at \$50,000. If bond out will have daily BAC. No alcohol. Set for Prelim, November 21<sup>st</sup> @ 10:30. Public Defender will be continued.

1:38-Court- Anything else?

Attest:





IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

FIFTH JUDICIAL DISTRICT  
233 WEST MAIN STREET  
JEROME, IDAHO 83338

STATE OF IDAHO  
Plaintiff,  
vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB:  
DL:

2014 NOV 14 PM 4 08

Michelle Emerson  
BY: *[Signature]*  
DEPUTY CLERK

Case No: CR-2014-0004282

**ORDER APPOINTING PUBLIC DEFENDER**

The Court being fully advised as to the application of GABRIEL ORTEGA-VASTIDA, and it appearing to be a proper case,

**NOW, THEREFORE, IT IS ORDERED** that attorney

Stacey DePew  
P.O. Box 9 414 North Lincoln Suite 5  
Jerome ID 83338  
(208) 324-5431

Public Defender for the County of Jerome, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, GABRIEL ORTEGA-VASTIDA, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 11-14-14

Thomas H. Buresen  
Judge

Copies to: ☒ Public Defender

☒ Prosecutor - John L. Horgan

11-14-14  
Date

*[Signature]*  
Deputy Clerk

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
**EN LA CORTE DEL QUINTO DISTRITO JUDICIAL  
DEL ESTADO DE IDAHO, CONDADO DE JEROME, DIVISIÓN DEL MAGISTRADO**

2014 NOV 14 PM 4 08

ESTADO DE IDAHO,

vs.

Gabriel Ortega-Vastida

*Michelle Emerson*  
BY: *[Signature]*  
DEPUTY CLERK

NUMERO DE CASO CR-2014-4282

**DECLARACIÓN DE DERECHOS DEL  
ACUSADO EN CASOS  
DE DELITOS MAYORES (FELONIAS)**

DEMANDADO

1. Usted tiene el derecho de quedarse callado; cualquier cosa que usted diga puede ser usada contra usted. No le pueden obligar a incriminarse a usted mismo.
2. Usted tiene el derecho de fianza. La cantidad o tipo de fianza o liberación en su propio reconocimiento es determinada por el juez después de considerar los hechos proveídos por la ley.
3. Usted tiene el derecho de ser representado por un abogado en cada etapa de estos procedimientos; si usted es pobre y no puede emplear (pagar) a un abogado, usted puede aplicar o pedir a la corte que le nombre un abogado que le represente a costo público.
4. Usted tiene el derecho a una audiencia preliminar dentro de catorce (14) días de esta fecha si usted está detenido en custodia (cárcel) o dentro de veintiun (21) días si no está detenido en custodia. Una examinación preliminar es una audiencia para determinar si se cometió una ofensa y ver si hay causa razonable de creer que usted cometió la ofensa. Si usted renuncia o rechaza su derecho a la audiencia preliminar, se le ordenará que se presente en la Corte del Distrito a comparecer en el cargo(s) pendiente contra usted.
5. Usted no puede declararse al cargo(s) cuando se presente en la Corte Magistral, pero puede declararse culpable o no culpable al tiempo que le informen de su cargo(s) en la Corte del Distrito.
6. Si usted se declara NO CULPABLE en su audiencia de informe de cargo(s) en la Corte del Distrito, la Corte fijará el día de juicio y usted o su abogado serán notificados de dicha fecha.
7. Usted tiene el derecho a un juicio frente de un jurado o puede renunciar este derecho y presentar su caso ante un juez. En su juicio el abogado acusador tiene que probarle culpable sin ninguna duda razonable. Cualquier veredicto de culpable por un jurado tiene que ser unánime.
8. Usted tiene el derecho de confrontar o hacer preguntas de cualquier testigo que de testimonio contra usted; y obligar la asistencia de testigos en su favor, sin costo a usted.
9. Si usted se declara CULPABLE en la Corte del Distrito, usted renuncia o rechaza cualquiera defensa que usted tenga contra los cargos archivados contra usted. Específicamente, con darse culpable usted renuncia o rechaza su derecho contra la autoincriminación; esto es, su derecho de guardarse callado o de no incriminarse a usted mismo. Usted también renuncia o rechaza su derecho de tener un juicio frente un jurado y el derecho de confrontar testigos que estén contra usted. Estos derechos los renuncia cuando se declara culpable en el caso pendiente el la corte a este tiempo.
10. Si usted se declara CULPABLE en la Corte del Distrito, la Corte fijará una fecha para la sentencia, a cual tiempo le dará una oportunidad de dar explicación o mitigación.
11. Además de cualquiera multa impuesto por la Corte en una convicción, tiene que pagar los costos de la Corte.
12. Usted tiene el derecho de apelar cualquiera convicción o sentencia de la Corte del Distrito a la Corte (Tribunal) Suprema del Estado de Idaho. La apelación tiene que ser archivada dentro de cuarenta y dos (42) días después de ser sometida la convicción de sentencia.

Yo declaro que he leído esta declaración y entiendo en contenido.

Firmado el día \_\_\_\_\_ del mes de \_\_\_\_\_, 20\_\_\_\_\_.

Demandado:

*Gabriel Ortega*



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME  
233 WEST MAIN STREET  
JEROME, IDAHO 83338

STATE OF IDAHO,  
Plaintiff.

vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB: [REDACTED]  
DL: [REDACTED]

2014 NOV 14 PM 4 08

Michelle Emerson  
BY: [Signature]  
DEPUTY CLERK

Case No: CR-2014-0004282

**NOTICE OF HEARING**

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

**Preliminary Hearing**

Judge:  
Courtroom:

**Friday, November 21, 2014 @ 10:30 AM**

Thomas H. Borresen  
Courtroom #1 - Magistrate Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice of Hearing were served as follows on this date: Friday, November 14, 2014.

Defendant: Gabriel Ortega-Vastida  
Mailed \_\_\_\_\_

Hand Delivered XX (Jerome Co Jail)

Private Counsel: Mailed \_\_\_\_\_

Hand Delivered XX

Stacey DePew

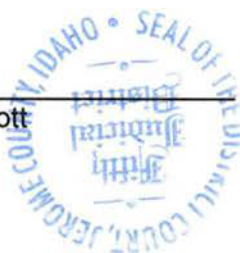
P.O. Box 9  
Jerome ID 83338

Prosecutor: John L Horgan  
Mailed \_\_\_\_\_

Hand Delivered XX

Dated: Friday, November 14, 2014  
MICHELLE EMERSON  
Clerk Of The District Court

By: [Signature]  
Deputy Clerk, Katie Elliott





Brad Calbo, ISB No. 4929  
Stacey DePew, ISB No. 7303  
**CALBO & DEPEW, PLLC**  
414 North Lincoln, Suite 5  
P.O. Box 9  
Jerome, Idaho 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorneys for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 NOV 17 PM 4 13

*Michelle Emerson*

CLERK  
BY *S. Peterson*  
DEPUTY CLERK



ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

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CASE NO. CR-2014-4282

**NOTICE OF INVOCATION OF**

**ALL STATUTORY AND**

**CONSTITUTIONAL RIGHTS AND**

**PRIVILEGES AND REVOCATION**

**OF ANY AND ALL PREVIOUSLY**

**GIVEN WAIVERS OF SAID**

**PRIVILEGES**

COMES NOW, the Defendant, by and through Defendant's attorney, and hereby  
notifies the Prosecuting Attorney's Office and all law enforcement agencies of the  
following:

1. Defendant invokes the following privileges:

- a. All privileges granted and/or guaranteed Defendant pursuant to Idaho Statute;
- b. All medical and psychiatric (including but not limited to drug and alcohol treatment, mental health treatment, domestic violence and/or anger management treatment) privileges afforded to Defendant under the Idaho and United States Constitutions and pursuant to Idaho statutory authority and/or the case law of the State of Idaho as to all medical and/or psychiatric treatment Defendant has ever received; and
- c. All privileges in school, employment, military, probation, prison, parole, social services, education, or any other records Defendant has a

**NOTICE OF INVOCATION OF ALL STATUTORY AND  
CONSTITUTIONAL RIGHTS AND PRIVILEGES AND REVOCATION OF ANY  
AND ALL PREVIOUSLY GIVEN WAIVERS OF SAID PRIVILEGES - 1**

confidentiality expectation through federal and state statutes and case law, administrative regulations and rules, or federal and state constitutional provisions, or the agencies own statements to Defendant, either oral or written.

2. Defendant requests that this Court specifically order that no member of the Prosecuting Attorney's Office, law enforcement, or any person or agency specified in Rule 16 of the Idaho Rules of Criminal Procedure or their respective agents attempt to obtain confidential information pertaining to Defendant.
3. Defendant does not authorize any person, other than counsel on Defendant's behalf, to waive said privileges.
4. Defendant hereby exercises Defendant's right to silence, right against self-incrimination, and Defendant's right to counsel under both the federal and state constitutions.
5. **The Defendant does not wish to be interviewed, contacted or questioned, about any matter, whatsoever, whether connected with the currently pending investigation or not, unless Defendant's attorney is present.** The Defendant wishes all of Defendant's contacts with state agents to take place through legal counsel.
6. Defendant further moves this Court to enter a prophylactic order requiring the Prosecuting Attorney's Office and any other law enforcement persons, and their agents to obtain the consent of Defendant's counsel before attempting to contact or interview the Defendant and to provide said counsel reasonable opportunity to be present **PRIOR** to any contact with the Defendant.
7. Additionally, counsel for the Defendant hereby notifies the court and the Prosecuting Attorney's Office, and all personnel associated therewith, that Defendant, as of today's date, revokes any and all previously stated or signed purported waivers of confidentiality and/or privilege, including but not limited to medical, psychological, custodial, marital, religious, education, and/or job related waivers. Defendant does not consent to release of any records to the prosecution, law enforcement, or any agents acting on behalf of the prosecution or law enforcement.
8. Defendant further revokes any and all previously stated or signed purported waivers of Defendant's constitutional right to silence, right against self-incrimination, and right to counsel.
9. The Defendant files this motion and makes all other motions and objections in this case, whether or not specifically noted at the time of the making of the motion or objection, on the following grounds and pursuant to the following authority: The Due Process Clause; the Right to a Fair Trial by an Impartial Jury; the Right

**NOTICE OF INVOCATION OF ALL STATUTORY AND  
CONSTITUTIONAL RIGHTS AND PRIVILEGES AND REVOCATION OF ANY  
AND ALL PREVIOUSLY GIVEN WAIVERS OF SAID PRIVILEGES - 2**

to Counsel; Equal Protection; the Confrontation Clause; the Right to Compulsory Process; the Right to Remain Silent and to Appeal; and the Right to be Free from Cruel and Unusual Punishment pursuant to the Federal and Idaho State Constitutions generally and specifically pursuant to the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments to the United States Constitutions and their Idaho State equivalents.

DATED this 17th day of November, 2014.

**CALBO & DEPEW, PLLC**

  
\_\_\_\_\_  
Stacey DePew  
Brad Calbo

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing **NOTICE OF INVOCATION OF ALL STATUTORY AND CONSTITUTIONAL RIGHTS AND PRIVILEGES AND REVOCATION OF ANY AND ALL PREVIOUSLY GIVEN WAIVERS OF SAID PRIVILEGES** to the office of the Prosecuting Attorney, on the 17<sup>th</sup> day of November, 2014, via Courthouse Box.

Jerome County Prosecuting Attorney

( ) U.S. Mail  
( ) Hand-delivery  
( ) Fax  
(X) Courthouse Box

  
\_\_\_\_\_  
Legal Assistant

**NOTICE OF INVOCATION OF ALL STATUTORY AND  
CONSTITUTIONAL RIGHTS AND PRIVILEGES AND REVOCATION OF ANY  
AND ALL PREVIOUSLY GIVEN WAIVERS OF SAID PRIVILEGES - 3**



Attorney for Defendant

Michelle Emerson  
BY Speterson  
DEPUTY CLERK

53 of 129

3. Any statements of the State's witnesses, whether written, oral or recorded, having knowledge of relevant facts and whom may be called as witnesses at the trial of this matter.

4. Any written or recorded statements of confession, or copies thereof, made by the Defendant and any videotapes or movies of the Defendant while in custody and within the possession or control of the State, and also the substance of any relevant oral statement made by the Defendant, whether before or after arrest, to a peace officer, prosecuting attorney, or his agent.

5. A copy of Defendant's prior criminal record, if any.

6. All books, papers, buildings, places, or copies or portions thereof, and tangible objects including all photographs and papers which are in your possession or the possession of your investigator and staff or in your control which are material to the preparation of the defense and/or intended for use by you as evidence at trial and/or obtained from or belonging to the Defendant.

7. All reports or physical examinations made of the Defendant by any physician and the results of any scientific tests or experiments made in connection with this case, including blood alcohol, intoximeter or mobat analysis. If there are intoximeter or intoxilyzer tests, please produce all log sheets, certification of calibration, certificate of approval, certificate of analysis, and maintenance logs pertaining to the intoximeter or intoxilyzer machine which indicate that the instrument and solutions used have been approved by the Idaho State Police, Forensics Department. Please also produce the certificate of instruction of officer, operator certification and all other documents showing officer is certified to conduct such tests and is a breath testing specialist. If there are radar readings, please produce all readings, certification of calibration of machine, certificate of instruction for officer, and all other documents showing officer is qualified to conduct such readings.

8. All investigative records, police reports, notes and memoranda made by the police officer or investigator in connection with the investigation or prosecution of this case.

9. All other evidence relevant to the preparation of the defense, including a written list of the names and addresses of persons having knowledge of relevant facts who may be called as witnesses at trial, together with any record of felony convictions or such person; and all information on which the State intends to rely in the prosecution of this action. This request includes the names, addresses, telephone numbers and underlying facts and data forming an opinion by witnesses intended by the State to testify to an opinion, lay or expert, pursuant to Rules 701, 702, 703, 704 and 705 of the Idaho Rules of Evidence.

10. Defendant requests said books, documents and test samples, pursuant to Idaho Criminal Rule 16(b)(4) and (5), for the reason that they are material to the preparation of the defense. Said books, documents and test samples are within the possession, custody and control of the prosecuting attorney or are available to him by the exercise of due diligence.

The undersigned further requests permission to inspect and copy said information, evidence and materials at the Law Office of Stacey DePew, 414 North Lincoln, Ste. 5, Jerome, Idaho.

DATED this 17th day of November, 2014.

CALBO & DEPEW, PLLC

A handwritten signature in black ink, appearing to read "Stacey DePew", is written over a horizontal line.

Stacey DePew

Brad Calbo

Attorneys for Defendant



**CERTIFICATE OF DELIVERY**

The undersigned hereby certifies that on the 17th day of November, 2014, I served a true and correct copy of the foregoing document by the following method and addressed as follows:

Jerome County Prosecuting Attorney

- ☐ U.S. Mail
- ☐ Hand-delivery
- ☐ Fax
- ☒ Courthouse Box

  
Legal Assistant

Brad Calbo, ISB No. 4929  
Stacey DePew, ISB No. 7303  
**CALBO & DEPEW, PLLC**  
414 North Lincoln, Suite 5  
P.O. Box 9  
Jerome, Idaho 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorneys for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 NOV 17 PM 4 13

*Michelle Emerson*

CLERK  
BY *Speterson*  
DEPUTY CLERK

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

)  
) Case No. CR-2014-4282  
)  
) **RESPONSE TO REQUEST FOR**  
) **DISCOVERY AND INSPECTION**  
) **AND NOTICE OF DEFENDANT'S**  
) **INTENT TO REQUEST BOND**  
) **REDUCTION AT PRELIMINARY**  
) **HEARING**  
)

COMES NOW, the Defendant, by and through his attorney and submits  
the following Response to Request for Discovery:

1. The Defendant has no copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are intended to be produced as evidence at trial at this time.
2. The Defendant has no copy of photograph results or reports of physical or mental examinations, scientific tests of experiments made in connection with this case that the Defendant intends to provide as evidence at trial at this time.
3. The defense may call the Defendant in this action; Investigator for the Law Office of Stacey DePew in addition to those witnesses listed in the State's Response to Discovery and Supplemental Response to Discovery, if any. Defendant objects to the remainder of information requested as beyond the scope of permissible Discovery under I.C.R. 16.

4. That in the event the Defendant discovers additional evidence or witnesses to be called at trial, prior to and during trial, evidence will be subjected to inspection by the Prosecuting Attorney, and Defendant reserves the right to file Supplemental Responses with respect to any additional evidence or witnesses.

5. In response to the Prosecution's request for notice of alibi, the Defendant requests written notice of the exact location of the subject offense or offenses.

6. Further, please take note that counsel for the defendant will be requesting a substantial reduction in the bond currently set at the time and place currently set for the Preliminary Hearing in this matter. Please make sure to notify any and all necessary parties of the same.

DATED this 17th day of November, 2014.


CALBO & DEPEW, PLLC

  
Stacy DePew  
Brad Calbo

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing RESPONSE TO REQUEST FOR DISCOVERY to the office of the Prosecuting Attorney on the 17<sup>th</sup> day of November, 2014 via Courthouse Box.

Jerome	County	Prosecuting	<input type="checkbox"/> U.S. Mail
Attorney			<input type="checkbox"/> Hand-delivery
			<input type="checkbox"/> Fax
			<input checked="" type="checkbox"/> Courthouse Box

  
Legal Assistant



JOHN L. HORGAN  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
TEL: (208) 644-2630  
FAX: (208) 644-2639  
ISB #3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 NOV 20 PM 4 04

*Michelle Emerson*

BY *Chen*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR JEROME COUNTY

\* \* \* \* \*

THE STATE OF IDAHO,	)	
	)	CASE NO. CR 2014-4282
Plaintiff,	)	
vs.	)	RESPONSE TO REQUEST
	)	FOR DISCOVERY
GABRIEL ORTEGA-VASTIDA,	)	
	)	
	)	
Defendant.	)	

\* \* \* \* \*

COMES NOW, the Jerome County Prosecuting Attorney's Office by and through its Attorney of Record, Deputy Prosecuting Attorney, and submits the following response to the Defendant's Request for Discovery:

The State may call as witnesses the following:

- 1) Jason Kelly – JPD
- 2) Jason Summers – JPD
- 3) Roger Sedlmayr – JCSO
- 4) Hospital Personnel

Pursuant to the defendant's request for discovery and inspection, the State furnishes copies of the following information, evidence, and materials; any of which may be used or offered into evidence. The originals of any of the items listed here may be inspected by making prior arrangements with the Jerome County Prosecuting Attorney.

A. Copies of:

- 1) Amended Complaint
- 2) Affidavit of Probable Cause
- 3) Intox printout
- 4) Notice of Suspension

- 5) Lab results of blood draw
- 6) Jerome County Jail Booking Paperwork
- 7) Police Report with Criminal History
- 8) Copy of prior Jerome County felony DUI conviction.
- 9) Verified application for bond revocation
- 10) Warrant

B. Defendant is hereby advised of the existence of the following materials. The originals can be viewed at the appropriate law enforcement agency. See attached release.

The State reserves the right to supplement discovery as information becomes available and to call any or all witnesses listed by the Defense, and to call any and all witnesses named in these materials but not listed as witnesses.

DATED this 20<sup>th</sup> day of November, 2014.

JOHN L. HORGAN

By:

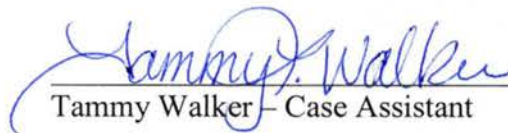


SANDRA SCOTT,  
Deputy Prosecuting Attorney

#### CERTIFICATE OF MAILING

I hereby certify that on this 20<sup>th</sup> day of November, 2014, I served a true and correct copy of the RESPONSE TO REQUEST FOR DISCOVERY upon the following person (s) named below, to be mailed or hand delivered to the following:

Stacey DePew  
Attorney at Law  
414 North Lincoln, Suite 2  
Jerome, ID 83338



Tammy Walker – Case Assistant



COURT MINUTES

CR-2014-0004282

State of Idaho vs. Gabriel Ortega-Vastida

Hearing type: Preliminary Hearing

Hearing date: 11/21/2014

Time: 10:36 am

Judge: Thomas H. Borresen

Courtroom: 002

Minutes Clerk: Jennifer Wilder

Defense Attorney: Stacey Depew

Prosecutor: Sandra Scott

1040 Court calls case—parties present—matter is before the court for preliminary hearing—counsel advice

1040 Ms. Depew: Move to exclude witnesses

Witnesses excused

1041 Ms. Scott: State calls Officer Kelly

1041 Officer Kelly duly sworn in—testifies to employment—testifies to training and duties—testifies to DUI training—

1043 Ms. Scott: Questions about date in question

1043 officer Kelly: I was transporting someone in an unrelated incident to Jerome County Jail—observed a vehicle pull out of an alley—observed the driver blocking both lanes of traffic—almost caused an accident and stopped the vehicle for safety concern—did make a traffic stop on the vehicle—I called Officer Summers to the scene and remained in my vehicle and once Summers arrived I continued with my transport—then about 15-20 minutes later Officer Summers brought the suspect to the jail and handed him into my custody—waited and observed the defendant for 15 minutes—played the audio—was unable to provide a sufficient breath sample—then had a .30 result and transported him to the hospital to get him medically cleared—defendant signed consent form for blood draw—observed the hospital staff withdraw the blood—explains the process of the blood



draws at the hospital—sealed the blood draw up as evidence—initial the evidence seal—secured the sample and placed it in the evidence refrigerator and then procedure is the evidence tech will send it off to the State lab—

1049 Ms. Depew: Object insufficient blow is invalid

1049 Ms. Scott: Argument—do not have the code section—

1050 Ms. Depew: It is not code—it is ISP code

1050 Court will sustain the objection it is not Idaho code

1050 Ms. Depew: Cross

1051 Officer Kelly: Fluent in Spanish—read the English forms to the defendant—at time of traffic stop there was a suspect in the back seat—next contact was with the defendant was at the jail—did not perform field sobriety test—at the jail he was brought into the intox room—observed him for 15 minutes—Spanish ALS was played for the defendant—he was unable to provide a deep lung sample-- describes the deep long sample—intox devices tells me if it is sufficient—machine will automatically default to a refusal if an amount of time passes without sufficient sample—25 minutes is about the time it took—then transported him to the hospital—it was rather quickly and processed quickly—the waiver form is located inside the blood draw kit—I explained it to him—do not recall if I informed him of the refusal—describes the ALS form—I reminded him that is he refused there would be a fine and suspension—

1057 Ms. Scott: Re-direct

1057 Officer Kelly: identifies the defendant—was involved with obtaining the identifying documents—police report would refresh memory—written that day—reviews report—police report indicates Gabriel V. Ortega—used his Idaho driver's license—defendant is the driver of the vehicle on the date in question

1102 Witness excused

1102 Ms. Scott: State calls Officer Summers

1103 Officer Summers duly sworn in—testifies to employment and training—describes training on identifying DUI stops—describes field sobriety training—describes FTO training—

1107 Ms. Scott: Questions of date in question

1107 Officer Summers: Officer Kelly requested that I assist him with a traffic stop—he was transporting another suspect to the jail—describe the driving pattern for the stop and



then he continued to do his transport—I made contact with the driver—he was unresponsive—eyes blood shot and glossy—nodding his head back and forth—struggle with his balance in a sitting position—strong alcoholic odor—asked him to exit the vehicle for FTS—he fell into the door that was open—used the vehicle for balance—grabbed his arm as he fell from the vehicle—assisted him to the back of the vehicle—he leaned up against the truck—I attempted to ask questions about his health and he was unresponsive—attempted FTS and he was unresponsive—had him step away from the vehicle to do the walk and turn and he stumble I had to assist him again—it was unclear to me if he needed an interpreter he failed to respond to anything—I had a canine in my vehicle so I had County officer transport him—had him taken to the jail—identifies defendant—record reflect identification

1112 Ms. Depew: Cross

1112 Officer Summers: I did not do a supplemental—I remember the incident—I do not have audio—this is solely my memory of what happened—did not provide me with DL or insurance—identified him from his wallet during the pat down—when I asked him questions he had just given me blank stares—not fluent in Spanish—just know a few words in Spanish—was unable to determine language at the scene—cannot determine that the confusion had anything to do with the language barrier—describes position of the vehicles at the scene—demonstrated FTS to the defendant—no response at all—he just stared straight ahead—I placed him into custody—determined he was unsafe to be on the road—

1118 Ms. Scott: Redirect

1118 Officer Summers: I opened the door and asked him to step out and he did—I pointed to the back of the vehicle and told him to come here and he complied

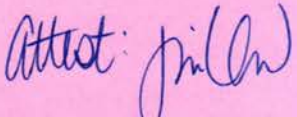
1119 Ms. Scott: Move to admit State's Exhibit 101—forensic lab—State's 102—certified judgment of conviction

**State's Exhibits 101 and 102 admitted**

1119 Ms. Scott: Submit

1119 Ms. Depew: Submit

1120 Court will find that the state has met its' burden of probable cause and will enter an order for the defendant to appear in the District Court 12/08/2014 @ 09:00 a.m.

Attest: 

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

STATE OF IDAHO,  
Plaintiff.

vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB:

DL:

2014 NOV 24 AM 9 16

Michelle Emerson  
BY:   
DEPUTY CLERK

Case No: CR-2014-0004282

**NOTICE OF HEARING**

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

**Arraignment**

Judge:

Courtroom:

**Monday, December 08, 2014**

**09:00 AM**

John K. Butler

Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice of Hearing were served as follows on this date: Monday, November 24, 2014.

Defendant: Gabriel Ortega-Vastida

Mailed \_\_\_\_\_

Hand Delivered ☒ (JCJ)

Private Counsel:

Mailed \_\_\_\_\_

Hand Delivered ☐

Stacey DePew

P.O. Box 9  
Jerome ID 83338

Prosecutor:

John L Horgan

Mailed \_\_\_\_\_

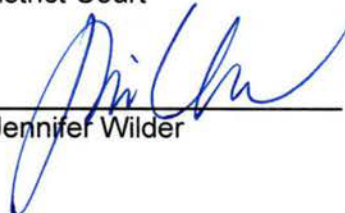
Hand Delivered ☐

Dated: Monday, November 24, 2014

MICHELLE EMERSON

Clerk Of The District Court

By:

  
Deputy Clerk, Jennifer Wilder



DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

2014 NOV 24 AM 9 16

STATE OF IDAHO,

Plaintiff,

VS.

GABRIEL ORTEGA-VASTIDA,

Defendant.

Michelle C. [Signature]  
BY: [Signature] CASE NO. CR-2014-0004282

DEPUTY CLERK

ORDER HOLDING DEFENDANT TO ANSWER TO DISTRICT COURT

[ ] Defendant having freely, knowingly and voluntarily waived a preliminary hearing, I order that the defendant be held to answer in the District Court to the charge(s) of:

[ ] From the evidence presented, I find that the charge(s)/offense(s) of:

D.U.I. Felony

has/have been committed and there is sufficient cause to believe the defendant has committed the offense thereof. I order that the defendant be held to answer to the charge(s) in the District Court.

The defendant shall appear in District Court for Arraignment on:

Monday, the 8<sup>th</sup> day of December, 2014, at 9:00 a.m.

IT IS SO ORDERED.

DATED This 21 day of November, 2014.

Thomas W. Buren  
MAGISTRATE JUDGE



**CERTIFICATE OF MAILING/DELIVERY**

I, the undersigned, hereby certify that on the 24 day of November, 2014,  
a true and correct copy of the foregoing **ORDER HOLDING DEFENDANT TO ANSWER  
TO DISTRICT COURT** was mailed, postage prepaid, and/or hand-delivered to the following  
persons:

John L Horgan  
233 W. Main St.  
Jerome, ID 83338

Stacey DePew  
P.O. Box 9  
Jerome, ID 83338

Deputy Clerk



John L. Horgan  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
Telephone: (208) 644-2630  
Facsimile: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 DEC 5 PM 12 36

*Michelle F...*  
CLERK  
BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\* \* \* \* \*

STATE OF IDAHO,	)	Case No.: CR 2014-4282
	)	
Plaintiff,	)	NOTICE OF FILING INFORMATION
	)	AND NOTICE OF ARRAIGNMENT
vs.	)	
	)	
GABRIEL ORTEGA-VASTIDA,	)	
	)	
Defendant.	)	

TO: GABRIEL ORTEGA-VASTIDA, the above-named defendant, and **STACEY DEPEW**, attorney of record:

NOTICE IS HEREBY GIVEN that an Information in the above entitled matter was filed against GABRIEL ORTEGA-VASTIDA, the above named defendant, on the 5<sup>th</sup> day of December, 2014, which charges said defendant with having committed the crime(s) of DRIVING UNDER THE INFLUENCE, I.C. § 18-8004, 18-8005(9).

YOU ARE FURTHER NOTIFIED that you are to appear in the District Court of the Fifth Judicial District, Jerome County Courthouse, Jerome, Idaho, for arraignment on the **8<sup>th</sup> day of December, 2014 at the hour of 9:00 a.m.**, or as soon thereafter as counsel may be heard.

Dated this 4<sup>th</sup> day of December, 2014.

*[Signature]*  
Jerome County Prosecutor



CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of December, 2014, I served a true and correct copy of the Information and the Notice of Filing Information and Notice of Arraignment upon the following person(s) named below, to be delivered as indicated:

Stacey DePew  
Attorney at Law  
Post Office Box 9  
Jerome, Idaho 83338

- ☐ U.S. Mail
- ☒ Interoffice Mail
- ☐ Hand Delivery
- ☐ Facsimile – (208) 324-5597

  
Secretary

John L. Horgan  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
Telephone: (208) 644-2630  
Facsimile: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 DEC 5 PM 12 36

Michelle Emerson  
CLERK

BY DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\* \* \* \* \*

STATE OF IDAHO,	)	Case No.: CR 2014- 4282
	)	
Plaintiff,	)	INFORMATION PART I
	)	
vs.	)	
	)	
GABRIEL ORTEGA-VASTIDA,	)	
	)	
Defendant.	)	
	)	

JOHN L. HORGAN, Prosecuting Attorney in and for Jerome County, State of Idaho, who, in the name and by the authority of said State prosecutes in its behalf, in proper person, comes now into said District Court in the County of Jerome, State of Idaho, and gives the Court to understand and be informed that GABRIEL ORTEGA-VASTIDA is being charged by this Information of the crime(s) of:

COUNT I

DRIVING UNDER THE INFLUENCE OF ALCOHOL  
Idaho Code 18-8004, 18-8005(9)  
Felony

That the defendant, GABRIEL ORTEGA-VASTIDA, on or about the 24<sup>th</sup> day of August, 2014, in the County of Jerome, State of Idaho, did drive or was in actual physical control of a motor vehicle upon a street or highway in the County of Jerome, State of Idaho, under the

influence of alcohol, drugs and/or other intoxicating substances and/or with a blood alcohol concentration of .08 or more.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Dated this 4<sup>th</sup> day of December, 2014.

JOHN L. HORGAN

By: Sandra L. Smith  
Jerome County Deputy Prosecutor



John L. Horgan  
Jerome County Prosecuting Attorney  
Jerome County Judicial Annex  
233 West Main  
Jerome, Idaho 83338  
Telephone: (208) 644-2630  
Facsimile: (208) 644-2639  
ISB No. 3068

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2014 DEC. 5 PM 12 36  
*Michelle Emerson*  
BY *[Signature]*  
CLERK  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

\* \* \* \* \*

STATE OF IDAHO,	)	Case No.: CR 2014-4282
	)	
Plaintiff,	)	INFORMATION
	)	
vs.	)	PART II
	)	
GABRIEL ORTEGA-VASTIDA,	)	
	)	
Defendant.	)	
_____	)	

JOHN L. HORGAN, Prosecuting Attorney in and for Jerome County, State of Idaho, who, in the name and by the authority of said State prosecutes in its behalf, in proper person, comes now into said District Court in the County of Jerome, State of Idaho, and gives the Court to understand and be informed that GABRIEL ORTEGA-VASTIDA, being charged by this Information of the crime of:

That the defendant, GABRIEL ORTEGA-VASTIDA, on or about the 24<sup>th</sup> day of August, 2014, in the County of Jerome, State of Idaho, did commit those acts set forth in Part 1 of the complaint and has previously been convicted within the past fifteen (15) years of one (1) or more felony violations of DRIVING UNDER THE INFLUENCE I.C. §18-8005 as follows:

**FIRST OFFENSE:**

That the defendant, GABRIEL ORTEGA-VASTIDA, on or about the 20<sup>th</sup> day of December, 2004, was convicted of DRIVING UNDER THE INFLUENCE, I.C. §18-8005(6), a felony, in the District Court, State of Idaho, in and for the County of Jerome, by virtue of pleading guilty or having been found guilty of said crime in Jerome County Case No. CR 2004-2082 for an incident, which occurred on or about 4<sup>th</sup> day of July, 2014.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

Dated this 4<sup>th</sup> day of December, 2014.

JOHN L. HORGAN

By:   
Jerome County Deputy Prosecutor



**DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Criminal Minute Entry  
STATE OF IDAHO VS. Gabriel Ortega-Vastida  
CR 2014-4282  
DATE: 12-8-14 @ 9:00 a.m.**

**HONORABLE JOHN K BUTLER, DISTRICT JUDGE PRESIDING  
DENISE SCHLODER, COURT REPORTER  
SHELLY CREEK, MINUTE CLERK  
JESUS MENDEZ, COURT INTERPRETER (OATH ON FILE)  
DISTRICT COURTROOM #2  
MATTER BEFORE THE COURT: Arraignment**

---

9:26 This being the time and place set for an arraignment, court convenes.  
Mr. John Horgan, Jerome County Prosecutor, appearing on behalf of the State.  
Ms. Stacey DePew, Jerome County Public Defender, appearing on behalf of the  
defendant who is also present personally. (Incarcerated)

Court advises Defendant of charges and maximum penalties.

Defendant and Counsel have received a copy of the Information filed by the State  
and have reviewed the charges contained therein. A formal reading of the  
information is waived by the defendant at this time.

Court advises Defendant of rights.

**9:28 The Defendant enters a plea of not guilty to all charges.**

**The Court schedules the following:**

Jury Trial -: 3-11-15 @ 9:00 a.m.

Pre trial conference - : 3-2-15 @ 9:00 a.m.

Additional status conference scheduled for: 1-26-15 @ 9:00 a.m.

Miss DePew: Request Preliminary Hearing Transcript.

Court: Will order a preparation of Preliminary Transcript at County Expense. Miss  
DePew to submit order.

Court in recess.

End Minute Entry.

Attest: 

Shelly Creek, Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

STATE OF IDAHO,  
Plaintiff.  
vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

DOB: [REDACTED]  
DL or SSN: [REDACTED]  
Defendant.

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO  
2014 DEC 9 AM 9 49  
CLERK  
BY [Signature] DEPUTY CLERK

Case No: CR-2014-0004282

NOTICE OF TRIAL  
NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

<b>Status</b>	<b>Monday, January 26, 2015</b>	<b>09:00 AM</b>
Judge:	John K. Butler	
Courtroom:	Courtroom #2 - District Courtroom	
<b>Pretrial Conference</b>	<b>Monday, March 02, 2015</b>	<b>09:00 AM</b>
Judge:	John K. Butler	
Courtroom:	Courtroom #2 - District Courtroom	
<b>Jury Trial</b>	<b>Wednesday, March 11, 2015</b>	<b>09:00 AM</b>
Judge:	John K. Butler	
Courtroom:	Courtroom #2 - District Courtroom	

I hereby certify that the foregoing is a true and correct copy of this Notice of Trial entered by the Court and on file in this office. I further certify that copies of this Notice of Trial were served as follows on this date: Tuesday, December 09, 2014.

Defendant:	Gabriel Ortega-Vastida	
	Mailed _____	Hand Delivered <u>JCSO</u>
Private Counsel:	Mailed _____	Hand Delivered <u>X</u>
Stacey DePew		
P.O. Box 9		
Jerome ID 83338		
Prosecutor:	John L Horgan	
	Mailed _____	Hand Delivered <u>X</u>

Dated: Tuesday, December 09, 2014  
MICHELLE EMERSON  
Clerk Of The District Court

By: [Signature]  
S. Creek, Deputy Clerk

Alternate Judges: Notice is hereby given that the presiding judge assigned to this case intends to utilize the provisions of I.C.R. 25(a)(6). Notice is also given that if there are multiple defendants, any disqualification pursuant to I.C.R. 25(a)(1) is subject to a prior determination under I.C.R. 25(a)(3). The panel of alternate judges consists of the following judges who have otherwise not been disqualified in this action: Judges Bevan, Brody, Butler, Crabtree, Elgee, Hurlbutt, Schroeder, Stoker, Wildman and Williamson.

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2014 DEC 8 AM 9 49

Michelle Emerson

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

Case No. CR-2014-4282

Gabriel Ortega-Vastida  
Defendant.

**NOTICE OF (1) JURY TRIAL; (2) PRE-TRIAL CONFERENCE; (3) STATUS  
CONFERENCE; (4) SCHEDULING ORDER; AND (5) DEFENDANT'S REQUESTS  
FOR FINANCIAL ASSISTANCE, I.C. § 19-852(a)(2)**

PLEASE TAKE NOTICE that the above-entitled case is hereby set for a **JURY TRIAL**  
to commence on the 11<sup>th</sup> day of March, 2015 at 9:00 a.m., for 3 day(s). The trial  
shall be conducted at the Jerome County Judicial Annex in Jerome, Idaho from 9:00 a.m. to 2:00  
p.m. with two twenty (20) minute breaks.

IT IS HEREBY ORDERED:

1. Discovery shall be expeditiously conducted by the parties in accordance with the  
provisions of Idaho Criminal Rule (I.C.R.) 16. The court anticipates and expects that the parties  
will timely disclose any and all actual or potential witnesses and/or exhibits at the earliest  
opportunity in response to any Rule 16 discovery request.



2. All pretrial motions listed in I.C.R. 12 must be filed and heard in accordance with the provisions and time requirements of I.C.R. 12. The preparation of any Preliminary Hearing Transcript (Transcript) shall not be the reason for the failure to comply with the I.C.R.12 deadlines absent a factual or legal showing as to why the Transcript is necessary for the court's consideration of the defendant's I.C.R. 12 motion. Any such motion filed shall set forth the issues to be decided by the court and there shall be filed with the motion a memorandum/brief in support setting forth the legal basis/authority.

3. The court hereby sets a **STATUS CONFERENCE** for the 26 day of January, 2015 at 9:00 a.m. Prior to the Status Conference the parties shall have confirmed with their respective witnesses the Jury Trial date and their availability for trial. In the event that a witness is unavailable for trial counsel shall advise the court as to the reason for the unavailability and how the witness's testimony is material for the trial. If a witness, is determined by a party to be unavailable for the scheduled trial date, [i.e. a lab technician, etc.] the parties shall be prepared to conduct a deposition of such witness in accordance with I.C.R. 15 in order to preserve the testimony of such witness for trial absent a showing of good cause as to why the personal attendance of the witness is necessary to preserve the substantial rights of the parties. The parties shall also be prepared to discuss the status of plea negotiations and any outstanding discovery or evidentiary issues.

4. Pursuant to I.C.R. 18, a formal **PRETRIAL CONFERENCE**, shall be held on the 2nd day of March, 2015 at 9:00 a.m.

a. The parties shall submit all proposed jury instructions, which include the elements, affirmative defenses, lesser included offenses and special verdict, together with the Exhibit List and Witness List, except exhibits or witnesses solely offered for the purpose of impeachment. Counsel shall retain the original of their respective exhibits. Any jury instruction submitted that is not a standard Idaho Criminal Jury Instruction (ICJI) shall be submitted with supporting legal authority.

b. If either party intends to introduce evidence covered by Idaho Rules of Evidence (I.R.E.) 404, 405, 406, 410, 412, 608, or 609, that party must disclose such evidence and file a Notice of Intent to offer such evidence at the earliest opportunity but not later than 14 days prior to the pretrial conference.

c. The parties at the time of the pretrial conference shall exchange with each other their exhibit and witness lists, except those exhibits and witnesses offered solely for the purpose of impeachment. The plaintiff shall pre-mark its exhibits beginning with Exhibit #101 and the defendant shall pre-mark his/her exhibits with Exhibit #201. Each party shall provide to the court copies of the pre-marked exhibits at the time of the pre-trial conference.

d. Prior to the pretrial conference the parties shall meet and confer to discuss the admissibility of exhibits proposed to be offered by the parties and each party shall stipulate to those exhibits that may be admitted without objection and any



such exhibits so stipulated to shall be marked as admitted by the clerk of the court at the time of the pretrial conference.

e. No witness shall be permitted to testify at trial other than those disclosed at the pretrial conference except as to those who are determined to be impeachment witnesses.

f. No exhibits will be admitted into evidence at trial other than those disclosed, listed, and marked in accordance with this Order, except when offered for impeachment purposes.

g. Notices to prospective jurors will be mailed seven (7) days prior to the commencement of the trial. Any change of plea or dismissal entered after notification to the prospective jurors may result in either or both parties and/or their respective counsel being assessed the cost of postage, copies, and other court administrative expenses in sending the juror notices.

h. This Order shall control the subsequent course of action unless modified for good cause shown to prevent manifest injustice.

i. The Court may impose appropriate sanctions for any violation of this Order.

j. The Court will not grant continuances unless extraordinary circumstances exist and all parties waive their right to speedy trial.

5. In the event that the defendant seeks to apply to the court for the employment of an expert witness or investigator pursuant to I.C. § 19-852(a)(2), the defendant or his attorney, if he is represented, must file the following documents UNDER SEAL (I.A.R. RULE 32(i)) in support of any request for the expenditure of public funds:

a. A Motion which contains the following specifics:

A. The need for the expenditure of such funds;

B. The expert/investigator credentials, and IF the expert/investigator is not from Idaho, then why the specific out-of-state expert/investigator is necessary;

C. How travel and other expenses are to be billed/measured; and

D. A certification that the expenditure of public funds is appropriate to make available "necessary services and facilities of representation" in keeping with I.C. § 19-852(a)(2);

b. An accompanying Affidavit of the defendant or counsel, if the defendant is represented, which contains the following:

A. A specific estimate of the amount of public funds to be expended in terms of hours and the work to be performed, including estimated expenses, rather than a request "not to exceed" a certain amount;

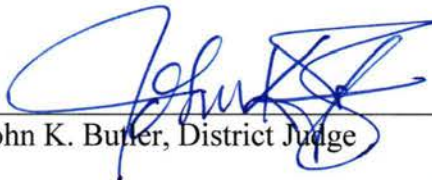
B. A certification that counsel has pursued the available market for experts/investigators and that the requested expert/investigator provides the most economical service available in his/her field; and

C. A certification that the expert/investigator will provide bills on a monthly basis for approval, with an affidavit or certification from the expert/investigator that specifies the work performed by the expert for that particular month.

c. The moving party shall present the judge with conformed copies of the motion and affidavit together with a proposed order. The original motion, affidavit and proposed order may be filed/served ex parte with the court and shall be filed UNDER SEAL with the court.

IT IS SO ORDERED.

DATED this 8<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
John K. Butler, District Judge



CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 9th day of Dec, 2014, a true and correct copy of the foregoing NOTICE OF (1) JURY TRIAL; (2) PRE-TRIAL CONFERENCE; (3) STATUS CONFERENCE; (4) SCHEDULING ORDER; AND (5) DEFENDANT'S REQUESTS FOR FINANCIAL ASSISTANCE, I.C. § 19-852(a)(2) was mailed, postage paid, and/or hand-delivered to the following persons:

Attorney for the State

Attorney for the Defense



Deputy Clerk





C. Bradley Calbo, ISB No. 4929  
Stacey DePew, ISB No. 7303  
CALBO & DEPEW, PLLC  
PO Box 9  
414 N. Lincoln Ste. 5  
Jerome, Idaho 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorneys for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 DEC 9 PM 3 58

*Michelle Emerson*  
CLERK

BY *[Signature]*  
DEPUTY CLERK

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

Case No. CR 2014-4282

**MOTION TO SUPPRESS**

Comes Now, the above-named defendant, by and through counsel, and moves this Honorable Court for an Order suppressing from evidence any and all fruits, products, or results of the warrantless and unjustifiable blood draw forced upon the defendant by law enforcement. As grounds in support of said motion, the defendant states as follows:


1. This motion is brought pursuant to the Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho State Constitution;
2. This motion is further based on the Idaho State Supreme Court's holding in State v. Wulff, Docket No. 41179 (Idaho, 2014) as well as the United States Supreme Court's holding in Missouri v. McNeely, 133 S.Ct. 1552 (2013);
3. On August 24, 2014 the Jerome City Police arrested Gabriel Ortega-Vastida for driving under the influence of alcohol;

4. An ALS advisory tape was played for Mr. Vastida at the Jerome County Jail.
5. That ALS advisory indicates that someone arrested on suspicion of DUI MUST submit to some form of evidentiary testing.
6. Mr. Vastida was unable to provide a sufficient breath sample to determine his BAC using the Lifelock 5000 at the Jerome County Jail.
7. Mr Vastida was transported to the St. Lukes Hospital in Jerome, Idaho in order to have a blood test performed.
8. He was now asked, prior to his transport to the hospital, if he was willing to allow a blood draw.
9. Mr. Vastida was reminded of what he has heard on the ALS advisory (that he must perform a test) and then "asked" if he would "consent" to a blood draw.
10. Mr. Vastida signed the consent form and blood was drawn.
11. The "consent" for a blood draw in this case was not voluntary and was done without a warrant. Mr. Vastida was at no time told he has a right to refuse to allow the drawing of his blood. Any 'consent' in this matter is not voluntary under those circumstance.
12. Warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment to the United States Constitution. Coolidge v. New Hampshire, 403 U.S. 443 (1971);
13. McNeeley prohibits per se exceptions to the warrant requirement and Idaho's implied consent statute operates as a per se exception, therefore failing to fall within the consent exception to the Fourth Amendment of the United States Constitution. Wulff, Id.

WHEREFORE, based on the foregoing, and for such other reasons as may appear to this Honorable Court, the defendant moves this Honorable Court for an Order suppressing from evidence all fruits, products and/or results of the warrantless stop, seizure, and arrest of the defendant as well as the results of any

forced blood draw, from trial and further requests that this Court issue an Order of dismissal of all charges in the above-entitled case.

DATED this 9<sup>th</sup> day of December, 2014.

  
Stacey DePew  
Attorney for Defendant

CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing MOTION TO SUPPRESS to be forwarded, via Courthouse box, to the Office of the Jerome County Prosecuting Attorney, on the 9 day of December, 2014

  
Legal Assistant





CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing  
NOTICE OF HEARING to be properly delivered to the following parties listed below, in the  
manner noted on this 9<sup>th</sup> day of December, 2014.

Jerome County Prosecuting Attorney  
Courthouse Box

---

C. Bradley Calbo, ISB No. 4929  
Stacey DePew ISB No. 7303  
**CALBO & DEPEW, PLLC**  
P.O. Box 9  
414 North Lincoln, Ste. 5  
Jerome, ID 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorney for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2014 DEC 10 AM 10 08

*Michelle Emerson*  
BY \_\_\_\_\_  
DEPUTY CLERK

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

Case No. CR 2014-4282

NOTICE OF HEARING  
(Amended)

PLEASE TAKE NOTICE that on the **26<sup>th</sup> day of January, 2015 at the hour of 1:30 P.M.** or as soon thereafter as counsel can be heard, the undersigned will call for hearing the Defendant's **STATUS CONFERENCE** in the above-entitled case.

DATED this 10 day of December, 2014.

  
\_\_\_\_\_  
Court Clerk



CERTIFICATE OF DELIVERY

I, the undersigned, hereby certify that I caused a true and correct copy of the foregoing  
NOTICE OF HEARING to be properly delivered to the following parties listed below, in the  
manner noted on this <sup>10</sup>~~9~~<sup>th</sup> day of December, 2014.

Jerome County Prosecuting Attorney  
Courthouse Box



87 of 129

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2014, a true and correct copy of the foregoing Order was delivered to the following parties in the manner noted below.

Jerome County Prosecutor

( ) Courthouse box

Calbo and DePew, PLLC

( ) Courthouse box

Court Reporter

( ) Hand delivered

( ) Courthouse box

\_\_\_\_\_  
Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

STATE OF IDAHO,  
Plaintiff.

vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

2014 DEC 10 PM 12 19

Michelle Emerson  
CLERK

BY: Michelle Emerson  
DEPUTY CLERK

Case No: CR-2014-0004282

Defendant  
DOB: [REDACTED]  
DL: [REDACTED]

AMENDED AND 2<sup>ND</sup>  
AMENDED NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion to Suppress  
Judge:  
Courtroom:

Monday, January 05, 2015 01:30 PM  
John K. Butler  
Courtroom #2 - District Courtroom

Status  
Judge:  
Courtroom:

Monday, January 26, 2015 09:00 AM (TIME CHANGE)  
John K. Butler  
Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice of Hearing were served as follows on this date: Wednesday, December 10, 2014.

Defendant: Gabriel Ortega-Vastida  
Mailed ☒

Hand Delivered ☐

Private Counsel: Mailed ☐

Hand Delivered ☒

Stacey DePew

P.O. Box 9  
Jerome ID 83338

Prosecutor: John L Horgan  
Mailed ☐

Hand Delivered ☒

Dated: Wednesday, December 10, 2014  
MICHELLE EMERSON  
Clerk Of The District Court

By: Traci Brandebourg  
Deputy Clerk

---

**DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Criminal Minute Entry  
STATE OF IDAHO VS. Gabriel Ortega-Vastida  
CR 2014-4282  
DATE: 1-5-15 @ 9:00 a.m.**

**HONORABLE JOHN K BUTLER, DISTRICT JUDGE PRESIDING  
DENISE SCHLODER, COURT REPORTER  
SHELLY CREEK, MINUTE CLERK  
JESUS MENDEZ, COURT INTERPRETER (OATH ON FILE)  
DISTRICT COURTROOM #2  
MATTER BEFORE THE COURT: Motion to Suppress**

---

8:59 a.m. Court: On this case a Motion to Suppress is set today @ 1:30 p.m. court convenes.

Mr. Paul Kroeger, Jerome County Prosecutor, appearing on behalf of the State.  
Ms. Stacey DePew, Jerome County Public Defender, appearing on behalf of the defendant who is NOT present personally.

Court: Bailiff informed me he has hearings in Twin today. No guarantee that we will be able to bring him over today. This Motion to Suppress was moved from 1-26-15, not sure why it was moved. Can we just reset it back to 1-26-15?

Counsel agree to move it to 1-26-15

Court: **Will Continue Motion to Suppress and Status hearing to 1-26-15 @ 1:30 p.m.**

Court in recess.

End Minute Entry.

Attest: \_\_\_\_\_

Shelly Creek, Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338

STATE OF IDAHO,  
Plaintiff.

vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB:

DL:

2015 JAN 5 PM 1 09

BY

DEPUTY CLERK

Case No: CR-2014-0004282

3<sup>rd</sup> AMENDED NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

**Motion to Suppress**

Judge:

Courtroom:

**Monday, January 26, 2015 01:30 PM**

John K. Butler

**Status**

Judge:

Courtroom:

**Monday, January 26, 2015 01:30 PM**

John K. Butler

Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice of Hearing were served as follows on this date: Monday, January 05, 2015.

Defendant:

Gabriel Ortega-Vastida

Mailed ☒ X

Hand Delivered \_\_\_\_\_

Private Counsel:

Mailed \_\_\_\_\_

Hand Delivered ☒ X

Stacey DePew

P.O. Box 9

Jerome ID 83338

Prosecutor:

John L Horgan

Mailed \_\_\_\_\_

Hand Delivered ☒ X

Dated: Monday, January 05, 2015

MICHELLE EMERSON

Clerk Of The District Court

By:

S. Creek, Deputy Clerk



---

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Criminal Minute Entry  
State of Idaho vs Gabriel Ortega-Vastida  
CR 2014-4282  
DATE: 1-26-15**

**Honorable John K Butler, District Judge presiding  
Denise Schloder, Court Reporter  
Traci Brandebourg, Minute Clerk  
Jesus Mendez, Court Interpreter (Oath on file)  
Courtroom: District Court #2  
MATTER BEFORE THE COURT: Motion to Suppress/Status**

---

1:55 p.m.

This being the time and place set for a pretrial, court convenes.

Ms. Sandra Scott, Jerome County Deputy Prosecutor, appearing on behalf of the State.

Ms. Stacey DePew, Jerome County Public Defender, appearing on behalf of the defendant who is also present personally (Incarcerated)

1:55 p.m.

Court reviews file herein.

1:55 p.m.

Ms. Scott calls State's first witness, Jason Kelly, duly sworn in.

1:56 p.m.

Ms. Scott begins direct of the witness.

1:56 p.m.

Officer Kelly responds. Reviews employment and duties. Reviews law enforcement experience. Reviews training. Reviews certifications. Reviews incident on 8-24-14. Reviews arrest. Reviews booking the Defendant. Reviews the Intoxilizer 5000. Explains how he offers the test. Used the Spanish version of the ALS. Instructed Defendant in Spanish. Witness is fluent in Spanish. Reviews taking the Defendant to the hospital for a blood sample.

2:06 p.m.

Ms. DePew objects-sustained.



2:06 p.m.

Officer Kelly continues response to direct. Reviews the blood draw consent form. Ms. Scott approaches witness. Identifies and reviews a blood draw consent form that is sent to the State Lab.

2:08 p.m.

Ms. DePew will stipulate to the admission of the consent form. Court admits State's Exhibit 1.

2:09 p.m.

Officer Kelly continues response to direct. Familiar with the written English version of the ALS. The verbiage and the intent of the Spanish tape and the written English version of the ALS.

2:11 p.m.

Ms. DePew will stipulate to written admissions form. Court admits State's Exhibit 2.

2:11p.m.

Officer Kelly continues response to direct. Reviews his tone with the Defendant. Reviews how many officers were present at the hospital.

2:14 p.m.

Ms. DePew begins cross examination of the witness.

2:14 p.m.

Officer Kelly responds. He wasn't the officer that did the field sobriety tests. Didn't speak to the Defendant until the jail. County officer conveyed information to witness. Played ALS advisory tape for the Defendant. There are slight variations between the tape and written form. Made small talk waiting for the 15 minutes. Reviews State's Exhibit 2. Brought into jail in handcuffs then it was changed to belly chains. Legs were not shackled. Believes Defendant knew he wasn't free to leave. Still in chains at hospital except for one are during the time of the blood draw. Reminded Defendant that he is required to submit by law. Reviews State's Exhibit 1. He didn't specifically tell Defendant he could say no to a refusal.

2:24 p.m.

Witness steps down and is excused.

2:24 p.m.

Ms. Scott presents argument to the Court.

2:34 p.m.

Ms. DePew presents argument to the Court.

2:42 p.m.

Ms. Scott presents final argument to the Court.

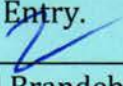
2:45 p.m.

Court will take the matter under advisement and enter a written decision in due course.

2:45 p.m.

Court in Recess.

End Minute Entry.

Attest:   
Traci Brandebourg  
Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

2015 FEB 2  
PM 4 16

Michelle Emerson  
CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendants.

Case No. CR-2014-4282

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**MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO SUPPRESS**

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On January 26, 2015 the defendant's Motions to Suppress came on regularly for hearing. The State was represented by Sandra Scott, Jerome County Deputy Prosecutor. The defendant, Gabriel Ortega-Vastida, was present and represented by counsel, Stacey DePew.

The Court having considered the testimony, evidence, briefs and arguments of counsel, took the motions under advisement for a written decision.

**I.  
FACTUAL AND PROCEDURAL BACKGROUND**

Officer Kelly, working for the Jerome City Police Department, stopped the defendant, Gabriel Ortega-Vastida, for suspicion of driving under the influence at approximately 1:30 a.m. on August 24, 2014. Officer Kelly had another individual in his custody and thus did not interact with the stopped driver, but called for assistance and remained on scene until Officer Summers

arrived to conduct further investigation of the stopped vehicle. Officer Kelly thereafter finished transporting his in-custody to the Jerome County Jail.

Officer Summers remained at the scene and conducted a series of field sobriety tests on the defendant and ultimately arrested him for driving under the influence. Another officer transported the defendant to the Jerome County Jail and instructed Officer Kelly to collect breath samples from the defendant. Officer Kelly began the process of collecting the samples and made small talk in Spanish with the defendant during the 15 minute observation period. Officer Kelly then "requested" that the defendant provide him two breath samples. The defendant was unable to provide sufficient samples. At that point Officer Kelly informed the defendant that he "would like to take him to the hospital to have a blood sample done." The defendant stood up and followed Officer Kelly for transport to St. Luke's in Jerome.

Officer Summers accompanied Officer Kelly and the defendant to the hospital as a "cover officer." Upon arriving at the hospital Officer Kelly, Officer Summers, and the defendant went into a room to await nursing staff. At that time Officer Summers began filling out paperwork while Officer Kelly obtained a blood draw kit. The kit contains a consent-to-draw card which Officer Kelly, "offered the defendant the opportunity to sign [] after translating it into Spanish" and reminding the defendant of the ALS advisory regarding or the possibility of civil penalties. The defendant then signed the consent card and hospital staff drew two samples from the defendant. The samples were placed into evidence at the Jerome County Police Department.

On December 9, 2014 the defendant filed a motion to suppress "all fruits, products and/or results of the warrantless stop, seizure, and arrest of the defendant as well as the results of any forced blood draw, from trial...and dismissal of all charges...."

## II. TESTIMONY AND EXHIBITS

### A. Testimony

#### Officer Jason Kelly

Officer Kelly works as a police officer and has been so employed for approximately four and a quarter years. In August 2014 he held an intermediate certificate under POST standards and had some specialized training with respect to identifying impaired drivers. He was also certified to use and administer the Intoxilyzer 5000 to collect breath samples from individuals suspected of impaired driving.

Officer Kelly worked for the Jerome City Police Department, when he stopped the defendant, Gabriel Ortega-Vastida, for suspicion of driving under the influence at approximately 1:30 a.m. on August 24, 2014 in Jerome, Idaho. Officer Kelly already had an individual in custody in his cruiser and thus made a stop of the driver but waited for another patrol officer to respond to his location and takeover the stop. A short time later, Officer Summers of the Jerome Police Department arrived and Officer Kelly continued on to the jail with his other in-custody. Officer Kelly did not have any one-on-one contact with the driver, later identified as Gabriel Ortega-Vastida, until the driver arrived at the jail.

Officer Summers conducted field sobriety tests on the driver/defendant and then arrested him for driving under the influence. Sometime later officers transported the defendant to the Jerome County Jail. Officer Kelly immediately began the process of administering the defendant a breath test after removing his cuffs and placing him in belly chains. Only Officer Kelly was present with the defendant in the Intoxilyzer room and he spoke fluent Spanish to the defendant throughout the interaction. Prior to any administration of a breath test, Officer Kelly played the defendant an audio recording of the ALS advisory in Spanish—it conveys the exact same



information as the English version. Thereafter Officer Kelly observed the defendant for a period of approximately 15 minutes during which time Officer Kelly conversed with the defendant in Spanish and observed that the defendant did not burp, belch, vomit or in any way skew the breath tests results. Officer Kelly testified that throughout his encounter with the defendant at the jail and hospital he remained professional and spoke respectfully to the defendant. However at no time did any officer tell the defendant that he had a right to refuse any tests.

Officer Kelly then entered his and the defendant's information into the Intoxilyzer and allowed it to complete a shelf check. Officer Kelly inserted a new spit guard and "offered" the defendant a breath tests by "requesting" that he blow into the machine. He testified that he generally says something to the effect of: "I would like you to blow into this machine to give me two samples." After several sincere attempts by the defendant to provide a breath sample the Intoxilyzer returned a printout indicating insufficient samples.

At that point Officer Kelly told the defendant that he "would like to take him to the hospital to have a blood sample done" and "asked if he was willing to do it." The defendant did not object to going to the hospital and merely stood up and went with the officer to his patrol car for transport to St Luke's in Jerome. Officer Summers accompanied Officer Kelly and the defendant as a "cover officer." Upon arriving at the hospital Officer Kelly informed hospital staff that he had an in-custody for a state lab blood draw and hospital staff directed him, Officer Summers, and the defendant to a 10' x 10' room.

Officer Summers began filling out paperwork while Officer Kelly obtained a blood draw kit. The blood draw kit contains a consent card for a blood draw. Officer Kelly "offered the defendant the opportunity to sign the card after translating it into Spanish" and reminding the defendant of the ALS advisory regarding required submission or the possibility of civil penalties.

The defendant signed on the line indicating that he gave permission for his blood to be drawn. After signing the consent, the hospital staff drew two samples from the defendant which were then placed into evidence at the Jerome County Police Department.

## **B. Exhibits**

**State's Exhibit #1**-Blood draw consent card.<sup>1</sup>

**State's Exhibit #2**-English ALS advisory form.

## **III. ISSUES**

1. Whether the defendant gave his voluntary consent for officers to collect a sample of his blood.

## **IV. STANDARD**

“At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.” *State v. LeClercq*, 149 Idaho 905, 243 P.3d 1093, 1094 (Ct. App. 2010) (citing *State v. Veldez-Molina*, 127 Idaho 102, 106, 897 P.2d 993 (1995)). On appeal, “[t]he standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, [the court of appeals] accept[s] the trial court's findings of fact that are supported by substantial evidence, but... freely review[s] the application of constitutional principles to the facts as found.” *Id.* (citing *State v. Atkinson*, 128 Idaho 559, 561, 926 P.2d 1284 (Ct. App. 1996)).

## **V. ANALYSIS**

### **1. Did the Blood Draw violate the Fourth Amendment?**

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<sup>1</sup> The State offered and the defendant stipulated to admission of this exhibit. This exhibit is merely a sample of the form but is not the consent form that has the signature of the defendant.

The Fourth Amendment provides, “[t]he right of the people to be secure in their persons...against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. Requiring a person to submit to a blood alcohol test is a search and seizure under the Fourth Amendment and Article I Section 17 of the Idaho Constitution. *State v. Wulff*, 337 P.3d 575, 577 (Idaho 2014) (citing *Schmerber v. California*, 384 U.S. 757, 767 (1966); *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007)); see e.g., *State v. Holton*, 132 Idaho 501, 975 P.2d 789 (1999) (Art. I, § 17 essentially coextensive with Fourth Amendment). Warrantless searches and seizures are presumptively unreasonable unless they fall within a well-recognized exception to the warrant requirement. *Missouri v. McNeely*, 133 S. Ct. 1552 (2013). Consent is a well-recognized exception to the warrant requirement. *Wulff*, 157 Idaho at 337 P.3d at 578.

Prior to *McNeely* and *Wulff*, Idaho recognized the implied consent statute § 18-8002 to permit warrantless blood draws under the consent exception to the warrant requirement. *Id.* at 578. In interpreting the Supreme Court’s decision in *McNeely*, the Idaho Supreme Court reached the conclusion in *Wulff*, “that implied consent is no longer acceptable when it operates as a per se exception to the warrant requirement because the [*McNeely*] Court repeatedly expressed disapproval for categorical rules.” *Id.* at 580. The Court in *Wulff* further reasoned that applying Idaho’s implied consent statute as a *per se* rule “does not always analyze the voluntariness of that consent”—an indispensable element to the consent exception. *Id.* at 581. Therefore, in light of *McNeely* and *Wulff*, officers must now secure a search warrant unless the State can show that the blood draw fits within one of the exceptions to the warrant requirement.



Consent—as an exception to the warrant requirement—is the focus of the Defendant’s motion to suppress.<sup>2</sup> The motion stems from a theory introduced at hearing that once officers arrest a suspect for impaired driving and give them the ALS advisory which states, “you are required by law to take one or more evidentiary test(s) to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body[,],” the suspect thereafter is incapable of giving voluntary consent unless officers specifically advise that the test(s) can be refused. The defendant argues that, without advising him of his right to refuse tests, officers transported him to St. Luke’s Hospital in Jerome and coerced a blood draw because (1) he listened to the ALS audio recording “requiring” that he submit to testing; (2) while at the hospital officer again reiterated the ALS advisory regarding required submission to some form of evidentiary testing; (3) two officers escorted him to the hospital and remained with him during the blood draw; (4) he remained in belly chains through the process and officers retained all his identifying documentation because he was not free to leave. Based on this alleged unreasonable conduct in violation of the Fourth Amendment the defendant asks that this Court suppress, among other things, “the results of any forced blood draw.”

The State argued at the hearing that *McNeely* and its Idaho progeny do not drastically change the state of the law. Rather, it argues that a defendant still gives implied consent to a breath or blood sample by driving on the State’s roads and that the defendant thereafter has the burden of showing by some verbal or physical act that he revokes his consent.<sup>3</sup> Alternatively, the State argues that the defendant’s conduct falls within the consent exception to the warrant

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<sup>2</sup> Both parties agree that an exigency exception to the warrant requirement is not applicable under the facts of this case.

<sup>3</sup> The State did not file a brief in this matter, but presumably this interpretation is based upon *Wulff*’s recitation that “Idaho’s implied consent statute must jump two hurdles to qualify as voluntary: (1) drivers give their initial consent voluntarily and (2) drivers **must continue** to give voluntary consent.” *Wulff*, 337 P.3d at 582 (emphasis added). However, the Court went on to conclude that voluntariness is a totality of the circumstances analysis and “Idaho’s implied consent statute operated as a per se exception [and] does not fall under the consent exception to the Fourth Amendment of the United States Constitution.” *Id.* at 581, 582.

requirement because he attempted to blow at the police station and thereafter signed a “Blood Draw Consent Form” and allowed nurses to collect blood samples without any resistance.

The Court disagrees with the State’s interpretation of the status of Idaho’s implied consent law.<sup>4</sup> As previously discussed, *supra*, the Idaho Supreme Court recently revisited the issue of the implied consent statute in light of *McNeely*. In *Wulff* the Court interpreted *McNeely* to prohibit a *per se* exception to the warrant requirement and mandated an individualized analysis under the totality of the circumstances to determine a suspect’s voluntary consent to give a blood sample. 337 P.3d at 582.

The *Wulff* court also addressed voluntariness of an individual’s consent:

Voluntariness has always been analyzed under the totality of the circumstances approach: “whether a consent to a search was in fact ‘voluntary’ . . . is a question of fact to be determined from the totality of all the circumstances.” Further, the State has the burden to prove [by a preponderance of the evidence] that “consent was, in fact, freely and voluntarily given.” Consent is not voluntary if it is “the product of duress or coercion, express or implied.” When the Court has determined whether a suspect’s consent was voluntary or coerced, its decisions “each reflected a careful scrutiny of all the surrounding circumstances” and “none of them turned on the presence or absence of a single controlling criterion.”

*Wulff*, 337 P.3d at 581 (internal citations omitted); *see also State v. Aschinger*, 149 Idaho 53, 55-56, 232 P.3d 831, 833-34 (Ct. App. 2009). To be deemed ‘voluntary’, consent need not be ‘knowing and intelligent’, but it cannot be the product of coercion by threat or force. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2054 (1973). To determine whether consent to the blood draw was given voluntarily, the Court must examine “the totality of the circumstances surrounding the consent” including; (1) the defendant’s knowledge of the constitutional right to refuse consent; (2) the defendant’s age, intelligence, education, and language ability; (3) the degree to which the defendant cooperated with police; and (4) the length

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<sup>4</sup> To the extent that the Idaho Supreme Court has affirmed the propriety of the implied consent statute it has merely “upheld the statutory consequences placed on defendants who refuse to comply.” *Wulff*, 337 P.3d at 582.

of detention and the nature of questioning, including the use of physical punishment or other coercive police behavior. *Schneckloth v. Bustamonte*, 412 U.S. at 225-226, 93 S. Ct. at 2046-2047 (1973). Some additional factors a court may consider when determining whether consent to search was given voluntarily, include:

[T]he number of officers involved in the confrontation; the location and conditions of the consent, including whether it was at night; whether the police retained the individual's identification; whether the individual was free to leave; and whether the individual knew of his or her right to refuse consent<sup>5</sup>.

*Moran-Soto*, 150 Idaho at 180, 244 P.3d at 1266 (citing *State v. Garcia*, 143 Idaho 774, 152 P.3d 645 (Ct. App. 2006)); see also *State v. Stewart*, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008). Furthermore, merely "bowing to events, even if one is not happy about them, is not equivalent to being coerced." *State v. Garcia*, 143 Idaho 774, 779, 152 P.3d 645, 650 (Ct. App. 2006). Nor can coercion be found when officers advise a suspect of the possible consequences to conduct that the law permits the officer to take. See e.g. *State v. Garcia*, 143 Idaho 774, 780, 152 P.3d 645, 651 (Ct. App. 2006).

In this case the Court considers the following factors adduced from the totality of the circumstances:

- (1) Once the defendant arrived at the police station Officer Kelly immediately started the breath test process; when that was unsuccessful, he immediately attempted to get a blood sample. This weighs in favor of voluntariness as the defendant had not been worn-down by police interrogation or repeated requests for consent to search.

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<sup>5</sup> Law enforcement officers need not inform DUI suspects that they have a right to refuse to consent to a blood test. *State v. Arrotta*, No. 41632-2013, 2014 WL 7185353 (Idaho Dec. 18, 2014).



(2) Officer Kelly's statement that, "I would like to take you to the hospital for a blood draw" is couched in terms of a request rather than a demand which weighs in favor of voluntariness.

(3) The defendant acquiesced to this request for a blood draw by standing and following the officer to his vehicle which suggests voluntariness since there is no evidence of coercion on the part of Officer Kelly. There is no evidence that the defendant objected or was in anyway resistant to going to the hospital. According to Officer Kelly he communicated with the defendant in Spanish and that Officer Kelly was fluent in Spanish.

(4) Only Officer Kelly was present when he initially stated or requested that "he would like to take the defendant to get a blood draw." This factor weighs in favor of voluntariness because there was one officer with the defendant without any language barrier.

(5) The location of the defendant's initial consent to go to the hospital was made while in the jail. This weighs in favor of coercion due to the inherently coercive nature of the facility.

(6) The location of the defendant's second consent for a blood draw (by signing the consent card) occurred in a 10' x 10' hospital room. While the hospital is not a coercive environment, the defendant remained in custody with two officers present. This is a neutral factor in the totality of the circumstances.

(7) There were two officers present at the time the defendant executed the consent card and during the blood draw at the hospital, although it was only Officer Kelly who was involved in obtaining the consent. This weighs slightly in favor of coercion because

the officers outnumber the defendant two to one. However it appears that the extent of Officer Summers's involvement at that point was merely accompanying the defendant and Officer Kelly to the hospital and filling out paperwork for the defendant while waiting on the blood draw.

(8) Officer Kelly "offered the defendant the opportunity to sign the [consent to draw blood] form after translating it into Spanish." This factor weighs in favor of voluntariness because the decision to sign was left to the defendant's discretion.

(9) The defendant signed the consent-to-draw card at the hospital which weighs in favor of voluntariness.

(10) Officer Kelly, as he was required to do for ALS purposes, did provide the ALS recording to the defendant in Spanish at the jail prior to administration of the breath test. Thereafter, there was no requirement of Officer Kelly to remind the defendant of the ALS requirements, since there is no evidence that the defendant did not understand the ALS advisory. While at the hospital and in obtaining the defendant's written consent to the Blood Draw, Officer Kelly reminded the defendant that he was "required" to submit to a test and again advised him of the civil penalty under I.C. § 18-8002. While this is a true and accurate statement of the law and the consequences the Department of Transportation imposes for a refusal, for purposes of any ALS proceeding, it is not a correct statement of the law for Fourth Amendment purposes. To tell the defendant that he is required to submit to the test—as opposed to telling the defendant that should he refuse, a warrant would be obtained for the blood draw—mitigates against the concept of voluntariness.

(11) Officer Kelly testified that he was professional and courteous to the defendant throughout their interaction; this weighs in favor of voluntariness.

(12) The defendant remained cuffed/belly chained in custody both at the jail and at the hospital. A physical restraint on a person in custody favors coercion.

(13) Officer Kelly never expressly told the defendant that he had a right to refuse. Though officers need not instruct a suspect that he may refuse to grant consent, failure to do so clearly weighs against voluntariness because the suspect does not have explicit knowledge of his rights.

(14) There is no testimony that officers ever informed the defendant of his *Miranda* rights which weighs against the concept of voluntariness.

(15) According to Officer Kelly the defendant appeared very intoxicated which makes his comprehension diminished but does not necessarily make his consent involuntary and is but one factor to consider as to whether the consent was the product of a free and unconstrained choice.

(16) Though the arrest occurred at 1:30 a.m. when it was dark, the relevant times for purposes of this hearing all occurred indoors at the Jerome County Jail or St. Luke's Hospital. This factor does not weigh for or against voluntariness.

In *State v. Wulff, supra*, after the defendant was taken into custody, he was asked to submit to a breath test which he refused. The deputy then informed the defendant that he would be taken to the hospital for a blood draw. Wulff said he understood and accompanied the officer to the hospital. It was after the defendant arrived at the hospital it was evident from his behavior and his own statements that he was not consenting to a blood draw.

In the case of Mr. Ortega-Vastida he was at all relevant times in custody. The defendant acquiesced, although he did not say anything, when Officer Kelly indicated he wanted to take him to the hospital for a blood test. The State presented no evidence that the defendant knew he



had the right to refuse the blood test and the evidence is undisputed that Officer Kelly reminded the defendant while at the hospital that he was "required" to submit to a blood test before the defendant signed the consent form.<sup>6</sup> The defendant was highly intoxicated; there was little or no words spoken by the defendant in his encounter with Officer Kelly. The defendant was in custody; was not free to leave; had not been advised of his *Miranda* rights and Officer Kelly again explained the ALS requirements for testing at the hospital. In conjunction with this reminder, the Officer never gave the defendant any indication of a right to refuse the blood test for constitutional purposes. It is also important to note that the defendant has been subject to similar testing in the past, since he is charged with having previously been convicted of a felony DUI in the past 15 years. The decision in *McNeely* and *Wulff* is a substantial departure from the law in place when the defendant was previously convicted in terms of his knowledge of his right to refuse for purposes of the Fourth Amendment.

Therefore, the Court must find that under the totality of the circumstances surrounding the defendant's consent to the blood draw, the consent was not voluntary.

## VI. CONCLUSION

For the reasons set forth above, the Motion to Suppress is GRANTED.

IT IS SO ORDERED.

DATED this 2 day of Feb., 2015

  
\_\_\_\_\_  
John K. Butler, District Judge


<sup>6</sup> In *State v. Arrota, supra.*, after the defendant refused the breath test, he was taken to the hospital for a blood draw and while at the hospital the defendant asked the officer if he could refuse, and the officer testified that he said something to the defendant which indicated that he could not refuse the blood test. To tell a defendant at the hospital prior to having the defendant consent to the blood draw that he is "required" to submit to a test is the equivalent of telling the defendant he cannot refuse.

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 2 day of February, 2015 a true and correct copy of the foregoing MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO SUPPRESS was mailed, postage paid, and/or hand-delivered to the following persons:

Jerome County Prosecutor

Stacey DePew

  
Deputy Clerk



LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Idaho State Bar # 4051  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2015 FEB 13 PM 1 43

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR JEROME COUNTY

STATE OF IDAHO

Plaintiff- Appellant,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant- Respondent.

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Jerome Co. Case No.

CR-2014-4282

Supreme Ct No.

NOTICE OF APPEAL

TO: GABRIEL ORTEGA-VASTIDA, THE ABOVE-NAMED  
RESPONDENT, STACEY DEPEW, JEROME COUNTY PUBLIC DEFENDER'S  
OFFICE, PO BOX 9, JEROME, IDAHO 83383, AND THE CLERK OF THE  
ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the  
above-named respondent to the Idaho Supreme Court from the MEMORANDUM  
DECISION RE: DEFENDANT'S MOTION TO SUPPRESS, entered in the above-

NOTICE OF APPEAL - 1



entitled action on the 2nd day of February, 2015, the Honorable John K. Butler presiding.

2. The state has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(7), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred by requiring actual consent in addition to implied consent, such that informing the suspect of the consequences of refusal rendered his blood draw involuntary even though the blood draw was valid under implied consent.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript: The state does not request preparation of a transcript.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That arrangements have been made with the Jerome County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(c) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(d) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 13th day of February, 2015.

  
KENNETH K. JORGENSEN  
Deputy Attorney General  
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 13th day of February, 2015, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JOHN K. BUTLER  
Jerome County Courthouse  
233 W Main St  
Jerome, Idaho 83338

SANDRA SCOTT  
Jerome County Prosecutor's Office  
300 N. Lincoln, Room 307  
Jerome, Idaho 83338

STACEY DEPEW  
Jerome County Public Defender's Office  
PO Box 9  
Jerome, Idaho 83338

HAND DELIVERY

MR. STEPHEN W. KENYON  
CLERK OF THE COURTS  
P.O. Box 83720  
Boise, Idaho 83720-0101

  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm



I hereby certify the foregoing to be a full, true and correct copy of the original on file in the above entitled action.

  
Michelle Emerson  
Clerk of the District Court  
Deputy  
2/13/15  
Date

NOTICE OF APPEAL - 4



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

233 WEST MAIN STREET  
JEROME, IDAHO 83338  
DISTRICT COURT  
FIFTH JUDICIAL DISTRICT  
JEROME COUNTY, IDAHO

STATE OF IDAHO,  
Plaintiff.

vs.

Gabriel Ortega-Vastida  
343 3rd Ave  
Twin Falls, ID 83301

Defendant.

DOB:

DL:

2015 FEB 18 AM 9 47

*Michelle*  
BY *[Signature]*  
DEPUTY CLERK

Case No: CR-2014-0004282

**NOTICE OF HEARING**

**NOTICE IS HEREBY GIVEN** that the above-entitled case is hereby set for:

**Status**

Judge:

Courtroom:

**Monday, February 23, 2015 09:00 AM**

John K. Butler

Courtroom #2 - District Courtroom

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office. I further certify that copies of this Notice of Hearing were served as follows on this date: Wednesday, February 18, 2015.

Defendant:

Gabriel Ortega-Vastida

Mailed \_\_\_\_\_

Hand Delivered   JCSO  

Private Counsel:

Mailed \_\_\_\_\_

Hand Delivered   X  

Stacey DePew

P.O. Box 9

Jerome ID 83338

Prosecutor:

John L Horgan

Mailed \_\_\_\_\_

Hand Delivered   X  

Dated: Wednesday, February 18, 2015

MICHELLE EMERSON

Clerk Of The District Court



By \_\_\_\_\_

S. Creek, Deputy Clerk

C. Bradley Calbo, ISB No. 4929  
Stacey DePew ISB No. 7303  
**CALBO & DEPEW, PLLC**  
P.O. Box 9  
414 North Lincoln, Ste. 5  
Jerome, ID 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorney for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2015 FEB 19 PM 4 19  
*Michelle Emerson*

CLERK  
BY *[Signature]*  
DEPUTY CLERK



ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,	)	
	)	CASE NO. CR- 2014-4282
Plaintiff,	)	
	)	<b>MOTION FOR APPOINTMENT OF</b>
vs.	)	<b>STATE APPELLATE PUBLIC</b>
	)	<b>DEFENDER</b>
GABRIEL ORTEGA-VASTIDA,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, GABRIEL ORTEGA-VASTIDA , by and through his attorney of record, Stacey DePew, and hereby moves this Court for its order pursuant to Idaho Code § 19-867, for its order appointing the State Appellate Public Defender's Office to represent the appellant in all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record. This motion is brought on the grounds and for the reasons that the appellant is currently represented by Stacey DePew, Jerome County Public Defender; the State Appellate Public Defender is authorized by Idaho Code § 19-870 to represent the defendant in all felony appellate proceedings; the defendant has been found indigent; and it is in the interest of justice for them to do so in this case.

MOTION FOR APPOINTMENT OF STATE  
APPELLATE PUBLIC DEFENDER – Page 1

The appointment of the State Appellate Public Defender is for the purposes of the appeal only.

DATED this 19 day of February, 2015.

  
\_\_\_\_\_  
Attorney for Defendant



**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 19 day of February, 2015, I served a true and correct copy of the MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER upon the parties below as follows:

JEROME COUNTY PROSECUTOR  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, ID 83338  
(HAND DELIVIERED TO COURTHOUSE BOX)

COURT REPORTER/S  
DENISE SCHLODER  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, IDAHO 83338  
(HAND DELIVERED TO COURTHOUSE BOX)

IDAHO SUPREME COURT  
PO BOX 83720  
BOISE, ID 83720

ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010

STATE APPELLATE PUBLIC DEFENDER  
3647 LAKE HARBOR LANE  
BOISE, ID 83706

GABRIEL ORTEGA-VASTIDA IDOC # 114113  
JEROME COUNTY JAIL

  
Legal Assistant

C. Bradley Calbo, ISB No. 4929  
Stacey DePew ISB No. 7303  
**CALBO & DEPEW, PLLC**  
P.O. Box 9  
414 North Lincoln, Ste. 5  
Jerome, ID 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorney for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY IDAHO

2015 FEB 20 AM 10 38

*Michelle Emerson*

CLERK

BY

DEPUTY CLERK

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

)  
) CASE NO. CR-2014-4282  
)  
)

) **ORDER FOR APPOINTMENT OF**  
) **STATE APPELLATE PUBLIC**  
) **DEFENDER**  
)  
)  
)  
)

**THIS MATTER** having come before the Court pursuant to Appellant's Motion for Appointment of State Appellate Public Defender, the Court having reviewed the pleadings on file and the motion; the Court being fully apprised in the matter and good cause appearing;

**IT IS HEREBY ORDERED** that Stacey DePew, is withdrawn as counsel of record for the Defendant and the State Appellate Public Defender is hereby appointed to represent the Appellant, Gabriel Ortega-Vastida in the above entitled matters for appellate purposes.

The appointment of the State Appellate Public Defender is for purposes of the appeal only.

DATED this 20 day of Feb, 2015.

*[Signature]*  
DISTRICT COURT JUDGE



ORDER FOR APPOINTMENT OF STATE  
APPELLATE PUBLIC DEFENDER – Page 1

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 23 day of February, 2015, I served a true and correct copy of the ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER upon the parties below as follows:

JEROME COUNTY PROSECUTOR  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, ID 83338  
(HAND DELIVIERED TO COURTHOUSE BOX)

COURT REPORTER/S  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, IDAHO 83338  
(HAND DELIVERED TO COURTHOUSE BOX)

IDAHO SUPREME COURT  
PO BOX 83720  
BOISE, ID 83720

ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010

STATE APPELLATE PUBLIC DEFENDER  
3647 LAKE HARBOR LANE  
BOISE, ID 83706

GABRIEL ORTEGA-VASTIDA IDOC # 76529  
JEROME COUNTY JAIL

I hereby certify the foregoing to be a full, true and correct copy of the original on file in the above entitled court.

Clerk of the District Court

2/23/15

[Signature]  
Deputy Clerk



**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO,  
IN AND FOR THE COUNTY OF JEROME**

**Criminal Minute Entry  
State of Idaho vs Gabriel Ortega-Vastida  
CR 2014-4282  
DATE: 2-23-15 @ 9:00 a.m.**

**Honorable John K Butler, District Judge presiding  
Denise Schloder, Court Reporter  
Shelly Creek, Minute Clerk  
Jesus Mendez, Court Interpreter (Oath on file)  
Courtroom: District Court #2  
MATTER BEFORE THE COURT: Status**

---

9:01 This being the time and place set for a Status court convenes.  
Mr. John Horgan, Jerome County Prosecutor, appearing on behalf of the State.  
Ms. Stacey DePew, Jerome County Public Defender, appearing on behalf of the  
defendant who is also present personally (Incarcerated)

9:01 Court: Did grant Motion to Suppress previously heard. State has filed a Notice  
of Appeal, Aware deft. was sentenced in T.F. in February. Given the appeal does  
either side have objection to court vacating trial date and placing matter on inactive  
status?

Both counsel respond no

Court: Will place matter on inactive status and wait determination of appeal.

Court in Recess.

End Minute Entry.

Attest: \_\_\_\_\_

Shelly Creek  
Deputy Clerk



C. Bradley Calbo, ISB No. 4929  
Stacey DePew ISB No. 7303  
**CALBO & DEPEW, PLLC**  
P.O. Box 9  
414 North Lincoln, Ste. 5  
Jerome, ID 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorney for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

ORIGINAL

2015 FEB 25 PM 4 18

*Michelle Emerson*

BY *[Signature]*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,	)	
	)	CASE NO. CR- 2014-4282
Plaintiff,	)	
	)	<b>MOTION TO ALLOW</b>
vs.	)	<b>DEFENDANT TO BE HOUSED BY</b>
	)	<b>THE IDAHO DEPARTMENT OF</b>
GABRIEL ORTEGA-VASTIDA,	)	<b>CORRECTION PENDING APPEAL</b>
	)	
Defendant.	)	
_____	)	

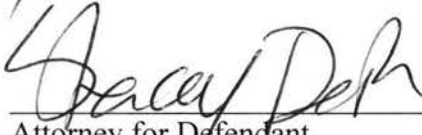
COMES NOW, GABRIEL ORTEGA-VASTIDA , by and through his attorney of record, Stacey DePew, and hereby moves this Court for its order allowing Mr. Ortega-Vastida to be housed by the Idaho Department of Correction at a facility of their choosing pending appeal in this case. Mr. Ortega-Vastida was sentenced in Twin Falls County to a three (3) year determinate and seven (7) year indeterminate sentence. His case in Jerome County has been placed in inactive status pending appeal of this Court's decision on Defendant's Motion to Suppress. That appeal could take several months to complete. It would be in Mr. Ortega-Vastida's best interest if he is allowed to spend the time pending appeal in the custody of the Idaho Department of Corrections rather than in the Jerome County Jail.

**MOTION TO ALLOW DEFENDANT TO BE PLACED IN IDOC CUSTODY PENDING  
APPEAL – Page 1**

Counsel is not seeking the Mr. Ortega-Vastida be granted an OR release at this time. This is concern that should this case be returned for trial upon the completion of the appeal Mr. Ortega-Vastida will have not been receiving credit for time served on this matter. It is also a concern that, depending on how long it takes for the appeal process to be completed, there will be difficulty locating Mr. Ortega-Vastida as counsel has been made aware of on ICE investigation involving Mr. Ortega-Vastida. It is believed that an Order allowing the Jerome County Jail to place Mr. Ortega-Vastida with the Idaho Department of Corrections will be sufficient to allow him to be transferred to an IDOC facility.

The State has been contacted and has no objection to this Motion.


DATED this 25<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 25 day of February, 2015, I served a true and correct copy of the MOTION TO ALLOW DEFENDANT TO BE PLACED IN IDOC CUSTODY PENDING APPEAL upon the parties below as follows:

JEROME COUNTY PROSECUTOR  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, ID 83338  
(HAND DELIVIERED TO COURTHOUSE BOX)

  
Legal Assistant



C. Bradley Calbo, ISB No. 4929  
Stacey DePew ISB No. 7303  
**CALBO & DEPEW, PLLC**  
P.O. Box 9  
414 North Lincoln, Ste. 5  
Jerome, ID 83338  
Telephone: (208) 324-5431  
Fax: (208) 324-5597

Attorney for Defendant

DISTRICT COURT  
FIFTH JUDICIAL DIST  
JEROME COUNTY, IDAHO

2015 FEB 27 AM 9 07

*Michelle Emerson*  
BY *[Signature]*  
DEPUTY CLERK



ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,

Plaintiff,

vs.

GABRIEL ORTEGA-VASTIDA,

Defendant.

CASE NO. CR- 2014-4282

**ORDER ALLOWING  
DEFENDANT TO BE HOUSED BY  
THE IDAHO DEPARTMENT OF  
CORRECTION PENDING APPEAL**

Based upon the Motion of the Defendant and good cause now appearing it is hereby Ordered that the above named Defendant's custody may be transferred to the Idaho Department of Corrections pending appeal in this case. The Jerome County Jail is authorized to allow the Idaho Department of Corrections to house the defendant in a facility of their choosing until such time as the appeal process is complete in this case.

DATED this 27 day of February 2015

*[Signature]*  
DISTRICT JUDGE



ORDER ALLOWING DEFENDANT TO BE PLACED IN IDOC CUSTODY PENDING  
APPEAL – Page 1

**CERTIFICATE OF MAILING**

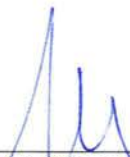
I HEREBY CERTIFY that on the 27 day of February, 2015, I served a true and correct copy of the ORDER ALLOWING DEFENDANT TO BE PLACED IN IDOC CUSTODY PENDING APPEAL upon the parties below as follows:

JEROME COUNTY PROSECUTOR  
JEROME COUNTY JUDICIAL ANNEX  
122 W. MAIN STREET  
JEROME, ID 83338  
(HAND DELIVERED TO COURTHOUSE BOX)

STACEY DEPEW  
ATTORNEY FOR DEFENDANT  
COURTHOUSE BOX

JEROME COUNTY JAIL  
COURTHOUSE BOX

IDOC  
emailed

  
\_\_\_\_\_  
DEPUTY CLERK



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

Supreme Court No. 42985

STATE OF IDAHO  
Plaintiff - Appellant

Case No. CR-2014-4282

v

Gabriel Ortega-Vastida  
Defendant - Respondent

CLERK'S CERTIFICATE OF APPEAL

APPEAL FROM: FIFTH JUDICIAL DISTRICT, JEROME COUNTY,  
HONORABLE JOHN K. BUTLER, PRESIDING

Case Number from Court or Agency: CR-2014-4282

Memorandum Decision Re: Filed February 2, 2015  
Defendant's Motion to Suppress

Attorney for Appellant: Attorney General, Room 210  
P.O. Box 83720  
Boise, ID 83720-0010

Attorney for Respondent: State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83706

Appealed by: Attorney General's Office

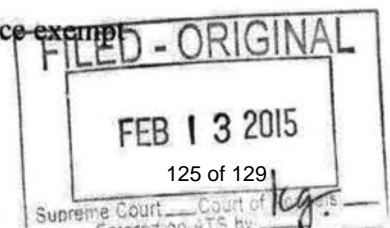
Appealed against: State of Idaho

Notice of Appeal filed: February 13, 2015

Notice of Cross-appeal: None

Appellate fee paid: No, Attorney General's office exempt

CLERK'S CERTIFICATE OF APPEAL



Request for additional Recorder's  
Transcript:

No

Request for additional clerks  
Record:

No

Name of Reporter:

N/A

Was Reporter's Transcript  
Requested:

No

Additional Comments:  
None

DATED this 13th day of February, 2015.

MICHELLE EMERSON  
Clerk of the District Court

By

*Shelly Creek*

Shelly Creek, Deputy Clerk

Emailed 2-13-15



SS  
I hereby certify the foregoing to be a full, true and correct  
copy of the original on file in my above entitled action.  
*Michelle Emerson*  
Clerk of the District Court  
Deputy  
62/13/15 Date

CLERK'S CERTIFICATE OF APPEAL



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

THE STATE OF IDAHO,	)	
	)	Case No. CR 2014-4282
Plaintiff/Respondent,	)	Supreme Court No. 42985
	)	
vs.	)	<u>CERTIFICATE OF EXHIBITS</u>
	)	
Gabriel Ortega-Vastida,	)	
	)	
Defendant/Appellant.	)	
_____	)	
STATE OF IDAHO	)	
	) ss.	
County of Jerome	)	

I, MICHELLE EMERSON, Clerk of the District Court of the Fifth Judicial District of the  
State of Idaho in and for the County of Jerome, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being  
forwarded to the Supreme Court on Appeal.

Reporters Transcript filed 12-31-14

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed the seal of the said Court this 4th day of May, 2015.

MICHELLE EMERSON  
Clerk of the District Court

By   
Shelly Creek, Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 42985
Plaintiff/Respondent,	)	DISTRICT COURT NO. CR 2014-4282
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Gabriel Ortega-Vastida,	)	
	)	
<u>Defendant/Appellant,</u>	)	

I, MICHELLE EMERSON, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Jerome, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the CLERK'S RECORD and REPORTER'S TRANSCRIPT to each of the Attorneys of Record in this cause as follows:

SARA THOMAS  
State Appellate Public Defender  
P.O. Box 2816  
Boise, ID 83701

LAWRENCE WASDEN  
Attorney General  
Statehouse Mail Room 210  
P.O. Box 83720  
Boise, Idaho 83720-0010

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said this 5th day of May, 2015.



MICHELLE EMERSON  
Clerk of the District Court

  
Shelly Creek, Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO,	)	
	)	SUPREME COURT NO. 42985
	)	DISTRICT COURT NO. CR 2014-4282
Plaintiff/Respondent,	)	
	)	
vs.	)	CLERK'S CERTIFICATE
	)	
Gabriel Ortega-Vastida,	)	
	)	
<u>Defendant/Appellant.</u>	)	

I, MICHELLE EMERSON, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Jerome, do hereby certify that the foregoing CLERK'S RECORD on Appeal in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court.

WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5th day of May, 2015.

MICHELLE EMERSON  
Clerk of the District Court



Shelly Creek, Deputy Clerk

